TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1897.

No. 135.

THE STEAMTUG "RESOLUTE"—A. B. HAMMOND AND E. L. BONNER, CLAIMANTS, APPELLANTS,

vs.

GEORGE DOWSETT.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF OREGON.

FILED FEBRUARY 21, 1898.

(16,199.)

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1 In the District Court of the United States for the District of Oregon. In Admiralty.

GEORGE DOWSETT, Libellant,
vs.
THE STEAMTUG RESOLUTE—A. B. HAMMOND and E. L. BONNER, Claimants and Appellants.

UNITED STATES OF AMERICA, *ss:*

To George Dowsett, the above-named libellant, and to Messrs. John T. Whalley and Lord & Potter, proctors for said libellant:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States within sixty days from the date hereof, pursuant to an appeal filed in the office of the clerk of the district court of the United States for the district of Oregon, wherein A. B. Hammond and E. L. Bonner are claimants and appellants and George Dowsett, the libellant above named, is respondent, to show cause, if any there be, why the judgment so appealed from should not be corrected and reversed and speedy justice should not be done to the parties in that behalf.

Witness the Hon. Melville W. Fuller, Chief Justice of the United States, this 19th day of December, A. D. 1895.

CHARLES B. BELLINGER,
District Judge.

2 STATE OF OREGON, *County of Multnomah,* } *ss:*

Due service of the within citation is hereby accepted, in Multnomah county, Oregon, this 19 day of December, 1895, by receiving a copy thereof, duly certified to as such by Wm. G. Muir, of attorney for appellants.

CHAS. F. LORD,
Of Attorneys for Libellant.

[Endorsed:] No. —. In the district court of the United States for the district of Oregon, department No. —. George Dowsett, libellant, *vs.* The Steamtug Resolute—A. B. Hammond & E. L. Bonner, claimants & appellants. Citation. Filed Dec. 19, 1895. E. D. McKee, clerk U. S. district court. Whalley & Muir, proctors for claimants & appellants.

3 In the District Court of the United States for the District of Oregon, March Term, 1894.

Be it remembered that on the 26th day of April, 1894, there was duly filed in the district court of the United States for the district of Oregon a libel in words and figures as follows, to wit:

4 In the District Court of the United States for the District of Oregon. In Admiralty. (*In Rem.*)

THE STEAMTUG RESOLUTE.

To the Honorable Charles B. Bellinger, judge of the district court of the United States for the district of Oregon:

The libel of George Dowsett, of the city of San Francisco, county of San Francisco, State of California, against The Steamtug Resolute, whereof said George Dowsett was lately chief engineer and whereof Charles Emerson is or lately was her master, her steam engines, boilers, machinery, tackle, apparel, and furniture, and also against all persons lawfully claiming for their interest therein, in a cause of subtraction of wages, civil and maritime, showeth:

Article I.

That your libellant, George Dowsett, is a citizen of the United States and a resident of California.

Article II.

That the steamtug Resolute was at all the times hereinafter mentioned run and operated as a steamtug or towboat in towing vessels and barges on and over the bar between Yaquina bay and the Pacific ocean and waters tributary thereto, all within the district of Oregon, and that said steamtug is now within the district of Oregon.

Article III.

That on or about the — day of October, 1889, the said steamtug Resolute, whereof William Ricketts was master, being at Yaquina, Oregon, and destined to towing vessels and barges to and from and over the bar at said Yaquina, Oregon, and to the Pacific ocean, that he, the said William Ricketts, by himself or his agent, did ship and hire the said libellant to serve as chief engineer on board the said steamtug for and during her said various towing voyages
5 and trips to and from the Pacific ocean and Yaquina bay, within the district of Oregon, at the rate of $150 per month, and that for the due performance of said voyages the libellant always stood ready and willing; that said contract was made by verbal agreement, your libellant having signed no shipping articles, but in pursuance of said agreement immediately entered the services of the said steamtug as chief engineer.

Article IV.

That during the various times between the said — day of October, 1889, and the 17th day of March, 1893, said steamtug was engaged in various voyages in towing vessels, as aforesaid, until the said 17th day of March, 1893, when said steamtug was tied up and your libellant discharged from the services of said vessel.

Article V.

That during the whole time your libellant was in the services of said steamtug he well and truly performed his duties according to *the* best ability, and was obedient to all lawful demands of the said master and of other officers of said steamtug, and deserves and ought to be paid amounting to the sum of $823.50; but, although the same has been demanded of the said master, he refuses to pay them or any part thereof, and there is now due the said sum of $823.50.

Article VI.

That all and singular the premises are true and within the admiralty and maritime jurisdiction of the United States and of this honorable court, and that said vessel is now in the hands of a receiver of the circuit court of the State of Oregon for Benton county, and that your libellant is in extreme need and has no means of support.

Your libellant, for a second cause of suit against the steamtug Resolute, upon information and belief alleges:

6 Article I.

That during all the times hereinafter mentioned the said steamtug Resolute was run and operated as a steamtug or towboat in towing vessels and barges on and over the bar between Yaquina bay and the Pacific ocean, within the district of Oregon, and the said steamtug is now within the district of Oregon.

Article II.

That on or about the — day of October, 1889, the said steamtug Resolute, whereof the said William Ricketts was master, being at Yaquina, Oregon, and destined to towing vessels and barges to and from and over the bar at said Yaquina, Oregon, to the Pacific ocean, that he, the said William Ricketts, by himself or his agents, did ship and hire one Tellef Tellefson to serve as fireman on board the said steamtug for and during her said various towing voyages and trips and from and over the bar at Yaquina bay and to the Pacific ocean at the rate of $65 per month, and that for the due performance of said voyages Tellef Tellefson always stood ready and willing on his part; that no shipping articles were signed by said Tellef Tellefson, said agreement being made verbally, and that in pursuance of said agreement said Tellef Tellefson immediately entered the services of said steamtug as aforesaid.

Article III.

That during the various times between the said — day of October, 1889, and the 17th day of March, 1893, said steamtug was engaged in various voyages in towing vessels as aforesaid until the said 17th day of March, 1893, when said steamtug was tied up and said Tellef Tellefson discharged from the services of said vessel.

Article IV.

That during the whole time said Tellef Tellefson was in the services of said steamtug he well and truly performed his
7 duties according to his best ability and was obedient to all lawful demands of the said master and of other officers of said steamtug and deserves and ought to be paid amounting to the sum of $358.02, but, although the same has been demanded of the said master, he refuses to pay them or any part thereof, and there is now due the said sum of $358.02.

Article V.

That by reason of the premises the said Tellef Tellefson acquired a lien upon said steamtug Resolute for the sum of $358.02, and that on the — day of March, 1894, said Tellef Tellefson, for a valuable consideration, assigned, transferred, and set over to your libellant his claim and account against the said steamtug Resolute, together with his right to hold a lien upon said steamtug for the payment of the same.

Article VI.

That all and singular the premises are true and within the admiralty and maritime jurisdiction of the United States and of this honorable court, and that the said vessel is now in the hands of a receiver of the circuit court of the State of Oregon for Benton county, and that your libellant is in extreme need and has no means of support.

Wherefore your libellant prays this honorable court that process in due form of law, according to the course of courts of admiralty and of this honorable court and in cases of admiralty and maritime jurisdiction, may issue against the said steamtug, her engine, boilers, machinery, tackle, apparel, and furniture, and that all persons claiming any right, title, or interest therein may be cited to appear and answer upon oath all the matters aforesaid, and that this honorable court will be pleased to decree the payment of the wages claimed herein, to wit, the sum of $1,181.52, and with costs, and that said vessel may be condemned and sold to pay the same, and that the libellant may have such other and further relief in the premises as in law and justice he may be entitled to receive.

JOHN T. WHALLEY,
CHAS. F. LORD,
Proctors for Libellant.

8 STATE OF OREGON,)
County of Multnomah,) ss:

I, George Dowsett, being first duly sworn, say that I am the libellant in the above-entitled suit, and that the foregoing libel is true, as I verily believe.

GEORGE DOWSETT.

Subscribed and sworn to before me this 16 day of March, 1894.
[SEAL.] JOHN T. WHALLEY,
Notary Public for Oregon.

Endorsed: Filed April 26, 1894. R. B. Lamson, clerk.

9 And afterwards, to wit, on Friday, the 27th day of April, 1894, the same being the 47th judicial day of the regular March term of said court—present, the Honorable Charles B. Bellinger, United States district judge, presiding—the following proceedings were had in said case, to wit:

10 In the District Court of the United States for the District of Oregon.

THE TUG RESOLUTE—GEORGE DOWSETT, Libellant. No. 3732.

APRIL 27, 1894.

Now, at this day, this cause comes on to be heard upon the application of the libellant for an order for the issuance of a warrant of arrest and monition herein, and was argued by Mr. Chas. F. Lord and Mr. J. T. Whalley, of counsel for said libellant; on consideration whereof it is ordered that said application be, and the same is hereby, denied.

11 And afterwards, to wit, on Tuesday, the 19th day of June, 1894, the same being the 92d judicial day of the regular March term of said court—present, the Honorable Charles B. Bellinger, United States district judge, presiding—the following proceedings were had in said case, to wit:

12 In the District Court of the United States for the District of Oregon.

THE TUG RESOLUTE—GEORGE DOWSETT, Libellant. No. 3732.

JUNE 19, 1894.

Now, at this day, on motion of Mr. J. T. Whalley, of counsel for the libellant, it is ordered that said libellant be, and he is hereby, allowed to file and present an application for an order allowing the issuance of a warrant of arrest in this cause.

13 And afterwards, to wit, on the 25th day of February, 1895, there was duly filed in said court a motion and affidavit in words and figures as follows, to wit:

14 In the District Court of the United States for the District of Oregon. In Admiralty. (*In Rem.*)

THE STEAMTUG RESOLUTE.

Comes now the libellant, George Dowsett, and based on the files and records of this suit and the affidavit of J. T. Whalley, hereto-

fore filed herein, moves the court for an order vacating the order heretofore, on the 27th day of April 1894, made herein directing that the libel in this cause should remain in abeyance until such time as the said steamtug Resolute should be discharged from the custody of the circuit court of the State of Oregon for Benton county, and directing that a writ of arrest in due form of law may issue against said vessel.

J. T. WHALLEY &
LORD & POTTER,
Proctors for George Dowsett, Libellant.

15 In the District Court of the United States for the District of Oregon. In Admiralty. (*In Rem.*)

THE STEAMTUG RESOLUTE.

STATE OF OREGON, } ss:
County of Multnomah, }

I, J. T. Whalley, being first duly sworn, say that I am one of the proctors for the libellant, George Dowsett, in the above-entitled cause and make this affidavit on his behalf; that the libel of said George Dowsett was filed with the clerk of this court on the — day of ——, 1894, and the judge thereof refused to sign or have issued a writ of arrest for said vessel, for the reason that the said vessel was at that time in the custody of the circuit court of the State of Oregon for Benton county by virtue of a certain order theretofore by said court made in a certain suit pending in said court, appointing a receiver for all the property of the Oregon Pacific Railroad Company, to which company the said vessel at that time belonged; that on the 27th day of April, 1894, subsequent to the filing of the libel of the said George Dowsett, by an order duly made, directed that the said libel should remain in abeyance until such time as the said vessel should be released from the custody of the said circuit court of the State of Oregon for Benton county.

That the receiver of the said Oregon Pacific Railroad Company has been discharged by the said court and the property thereof, including the said steamtug Resolute, sold, and said sale by said court confirmed, and said vessel is no longer within the custody of said court.

JOHN T. WHALLEY.

Subscribed and sworn to before me this 15 day of February, 1895.

[SEAL.] T. S. POTTER,
Notary Public for Oregon.

Endorsed: Filed February 25, 1895. R. B. Lamson, clerk.

16 And afterwards, to wit, on the 25th day of February, 1894, there was duly filed in said court an order in words and figures as follows, to wit:

17 In the District Court of the United States for the District of Oregon. In Admiralty. (*In Rem.*)

THE STEAMTUG RESOLUTE.

On reading and filing the affidavit of J. T. Whalley, and it appearing from said affidavit that the said steamtug Resolute has been discharged from the custody of the receiver heretofore appointed by the circuit court of the State of Oregon for Benton county, on motion of proctors for libellant, George Dowsett, it is ordered that an order made in this cause by this court on the 27th day of April, 1894, directing that the libel in this suit remain in abeyance until such time as the said steamtug Resolute should be discharged from the custody of said circuit court of the State of Oregon for Benton county be, and the same is hereby, vacated, and a writ of arrest in due form of law is directed to issue against the said steamtug Resolute.

CHARLES B. BELLINGER,
District Judge.

Endorsed: Filed February 25, 1895. R. B. Lamson, clerk.

18 And afterwards, to wit, on the 25th day of February, 1895, there was issued out of said court a warrant in words and figures as follows, to wit:

19 *Return in Case of Admiralty Seizure.*

UNITED STATES OF AMERICA, }
District of Oregon, } ss.

In obedience to the command of the within writ I did, on the 1st day of March, 1895, at the port of Toledo or in the district of Oregon, arrest the within-named vessel, the steamtug "Resolute," by going on board of her and seizing and arresting her and taking said steamtug into my custody, together with her tackle, apparel, and furniture, and I served a duly certified copy of this writ at said time upon Joe Morris, who was in charge of said steamtug *and in charge thereof.* I also posted a duly certified copy thereof in a public place in plain view on said steamtug. I served upon Joe Morris, who was in charge of said steamtug, personally a duly certified copy of the complaint in the therein-entitled cause, at the port of Toledo, on the 1st day of March, 1895. I further caused to be published in the daily "Sun," in the said district of Oregon, for fifteen consecutive publications, exclusive of Sundays, the following notice and citation hereto affixed and made a part of this return:

United States Marshal's Notice.

Admiralty Seizure *In re* THE STEAMTUG "RESOLUTE."

Citation.

UNITED STATES OF AMERICA, } ss:
District of Oregon, }

Whereas, a libel has been filed in the district court of the United States for the district of Oregon, on the 26th day of April 1894, by Jno. T. Whalley and Lord & Potter, proctors on behalf of George Dawsett as libellant, in a cause of contract for seamen's wages, civil and maritime, against the steamtug "Resolute," her tackle, apparel and furniture, and praying the usual process and monition of the court, that all persons interested in said steamtug, her tackle, apparel, machinery and furniture may be cited to appear and answer the premises and all due proceedings being had, that the said steamtug may be decreed to be sold, and the proceeds thereof distributed according to law.

Therefore, in pursuance of said monition under the seal of the said court, to me directed and delivered on the 25th day of February, 1895, I do hereby give notice, generally, unto all persons having, or pretending to have, any right, title or interest in the said steamtug called the "Resolute," her tackle, apparel, machinery and furniture, to appear before the said court, in the city of Portland, in said district, on Monday, April 1, 1895 next (if it be a court day, or else on next court day thereafter), at 11 o'clock a. m. -noon of said day, then and there to answer the said libel, and to make known their allegations in that behalf.

Dated at Portland, in said district, this 8th day of March, A. D. 1895.

H. C. GRADY,
U. S. Marshal for the District of Oregon.

JNO. T. WHALLEY AND
LORD & POTTER,
Proctors for Libellant.

Subsequently and on the 24 day of March, 1895, upon claim being filed by —— ——, and the said claimant having given a good and sufficient bond in double the amount claimed by the libellant, to wit, in the sum of $2,500.00, which bond was duly approved by T. J. Block, collector of customs, district of Willamette, conditioned to abide by and answer the decree of the court in said cause, I released said steamtug The Resolute to said claimant upon said bond aforesaid, with her tackle, apparel, and furniture. The abovementioned bond is herewith returned.

HENRY C. GRADY,
U. S. Marshal,
By GEO. HUMPHREY, *Deputy.*

Dated at Portland, Oregon, this 24 day of March, 1895.

20 *Warrant of Arrest and Monition.*

UNITED STATES OF AMERICA, } ss:
District of Oregon, }

The President of the United States of America to the marshal of the district of Oregon or his deputy, Greeting:

You are hereby strictly enjoined and commanded that you arrest the vessel called the *the* tug Resolute, whereof Charles Emerson now is or lately was master, her boats, tackle, apparel, and furniture if she shall be found within your district, and the same so arrested you keep under safe and secure arrest until you shall receive further orders from the court or the same shall be discharged in due course of law, and that you site at the premises all persons in general who have or pretend to have any right, title, or interest therein to appear before the judge of the district court of the United States for the district of Oregon, at the city of Portland, on the 1st day of April, A. D. 1895, if it be a court day, or else on the court day next following, at ten o'clock in the forenoon of such day, then and there to answer unto George Dowsett in the cause of contract for wages, civil and maritime, and further to do and to receive in this behalf as to justice shall appertain, and that you duly certify the court aforesaid what you shall do in the premises, together with these presents.

Witness the Honorable Charles B. Bellinger, judge of said court, and the seal thereof, hereto affixed at Portland, in said district, on the 25th day of February, A. D. 1895.

[Seal United States District Court, Oregon.]

R. B. LAMSON, *Clerk*,
By G. H. MARSH,
Deputy Clerk.

Endorsed: Returned and filed October 28, 1895. E. D. McKee, clerk.

21 And afterwards, to wit, on the 2d day of March, 1895, there was duly filed in said court a claim of owner in words and figures as follows, to wit:

22 DISTRICT OF OREGON, *ss:*

To the Hon. Charles B. Bellinger, judge of the district court of the United States for said district:

Edwin Stone, of Portland, Multnomah county, in the district of Oregon, for and on behalf of Bonner & Hammond and as their agent and attorney-in-fact, owners of the vessel called the tug Resolute, her tackle, apparel, and furniture, intervening for interest in said vessel, her tackle, &c., appear- before this honorable court and claim- said vessel, her tackle, &c., and state- that the said Bonner and Hammond are the true and *bona fide* owners thereof; and there-

upon the said claimant prays that this honorable court will be pleased to decree to him a restitution of the said vessel, her tackle, &c., and otherwise right and justice to administer in the premises.

And the said Edwin Stone, being duly sworn, deposes and says that no other persons except the said E. L. Bonner and A. B. Hammond are owners of the said vessel, her tackle, &c., or of any part thereof, and that this affiant is the agent and attorney-in-fact for said owners.

EDWIN STONE.

Subscribed and sworn to before me this 2nd day of March, 1895.

R. B. LAMSON, *Clerk*,
By G. H. MARSH,
Deputy Clerk.

Endorsed: Filed March 2, 1895. R. B. Lamson, clerk.

23 And afterwards, to wit, on the 28th day of October, 1895, there was duly filed in said court claimant's stipulation for costs and to abide by and pay the decree in words and figures as follows, to wit:

24 In the District Court of the United States for the District of Oregon.

GEORGE DOWSETT, Libellant,
vs.
TUG RESOLUTE.

Whereas a libel was filed in the above-entitled court on the 25th day of April, 1894, against the said tug Resolute, her tackle, apparel, and furniture, for the reasons and causes in said libel mentioned, and praying that the same may be condemned and sold to answer the prayer of said libellant, and a claim has been filed by Edwin Stone, agent and attorney-in-fact for Bonner and Hammond, the owners of said vessel called the Resolute, for and on behalf of said owners, and the said claimant and Henry Failing, surety, the parties hereto, hereby consenting and agreeing that in case of default or contumacy on the part of the claimant or his surety execution may issue against their goods, chattels, and lands for the sum of twenty-five hundred dollars:

Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the stipulators undersigned shall be and are bound in the sum of twenty-five hundred dollars, gold coin of the United States, conditioned that the claimants above named shall abide by and pay the money awarded by the final decree rendered in the cause by this court or, in case of appeal, by the appellate court.

EDWIN STONE.
HENRY FAILING, *Surety.*

Taken and acknowledged before me this 2nd day of March, 1895.

UNITED STATES OF AMERICA, } ss:
District of Oregon, }

I, Henry Failing, of the city of Portland, county of Multnomah, Oregon, being first duly sworn, depose and say that I reside in the district of Oregon, and that I am a householder in said district and am worth the sum of five thousand dollars over and above all my just debts and liabilities.

25 HENRY FAILING.

Subscribed and sworn to before me this 2nd day of March, 1895.

[SEAL.] A. D. MILLER,
Notary Public in and for Oregon.

I hereby certify that I am personally acquainted with Henry Failing, of the city of Portland, county of Multnomah, Oregon, and know him to be worth the sum set forth in his affidavit over and above his legal liabilities, and the bond is hereby approved.

THOS. J. BLACK,
[SEAL.] *Collector of Customs.*

Endorsed: Filed October 28, 1895. E. D. McKee, clerk.

26 And, to wit, on Monday, the 1st day of April, 1895, the same being the 24th judicial day of the regular March term of said court—present, the Honorable Charles B. Bellinger, United States district judge, presiding—the following proceedings were had in said case, to wit:

27 In the District Court of the United States for the District of Oregon.

THE TUG RESOLUTE—GEORGE DOWSETT, Libellant; BONNER and HAMMOND, Claimants. No. 3732.

APRIL 1, 1895.

Now, at this day, comes the libellant, by Mr. Charles F. Lord, of counsel, and the claimants, by Mr. W. T. Muir, of counsel, and, on motion of said libellant, it is ordered that he be, and he is hereby, allowed to amend the libel filed herein.

28 And afterwards, to wit, on the 4th day of May, 1895, there was duly filed in said court an amended libel in words and figures as follows, to wit:

29 In the District Court of the United States for the District of Oregon. In Admiralty. (*In Rem.*)

THE STEAMTUG RESOLUTE.

To the Honorable Charles B. Bellinger, judge of the district court of the United States for the district of Oregon:

The amended libel of George Dowsett, of the city of San Francisco, county of San Francisco, State of California, against the steam-

tug Resolute, whereof said George Dowsett was lately chief engineer and whereof Charles Emerson is or lately was her master, her steam-engines, boilers, machinery, tackle, apparel, and furniture, and also against all persons lawfully claiming for their interest therein in a cause of subtraction of wages, civil and maritime, showeth:

Article I.

That your libellant, George Dowsett, is a citizen of the United States and a resident of California.

Article II.

That the steamtug Resolute was at all the times hereinafter mentioned run and operated as a steamtug or towboat in towing vessels and barges on and over the bar between Yaquina bay and the Pacific ocean and waters tributary thereto, all within the district of Oregon, and that said steamtug is now within the district of Oregon.

Article III.

That on or about the — day of October, 1889, the said steamtug Resolute, whereof William Ricketts was master, being at Yaquina, Oregon, and destined to towing vessels and barges to and from and over the bar at said Yaquina, Oregon, and to the Pacific ocean, that he, the said William Ricketts, by himself or — did ship hire the said libellant to serve as chief engineer on board the said steamtug for and during her said various towing voyages and trips to and from the Pacific ocean and Yaquina bay, within the district of Oregon, at the rate of $150 per month, and that for the due performance of said voyages the libellant always stood ready and willing; that said contract was made by verbal agreement, your libellant having signed no shipping articles, but, in pursuance of said agreement, immediately entered the service of the said steamtug as chief engineer.

Article IV.

That during the various times between the said — day of October, 1889, and the 17th day of March, 1893, said steamtug was engaged in various voyages in towing vessels, as aforesaid, until the said 17th day of March, 1893, when said steamtug was tied up and your libellant discharged from the services of said vessel.

Article V.

That during the whole time your libellant was in the services of said steamtug he well and truly performed his duties according to *the* best ability and was obedient to all lawful demands of the said master and of other officers of said steamtug, and deserves and ought to be paid amounting to the sum of $825.50; but, although the same has been demanded of the said master, he refuses to pay them or any part thereof, and there is now due the said sum of $825.50.

Article VI.

That all and singular the premises are true and within the admiralty and maritime jurisdiction of the United States and of this honorable court, and that at all the times hereinbefore mentioned said steamtug was in charge of a receiver appointed by the circuit court of the State of Oregon for Benton county, but said steamtug has since been discharged from said receivership.

Your libellant, for a second cause of suit against the steamtug Resolute, upon information and belief alleges:

31 Article I.

That during all the times hereinafter mentioned the said steamtug Resolute was run and operated as a steamtug or towboat in towing vessels and barges on and over the bar between Yaquina bay and the Pacific ocean, within the district of Oregon, and the said steamtug is now within the district of Oregon.

Article II.

That on or about the — day of October, 1889, the said steamtug Resolute, whereof the said William Ricketts was master, being at Yaquina, Oregon, and destined to towing vessels and barges to and from and over the bar at said Yaquina, Oregon, to the Pacific ocean, that he, the said William Ricketts, by himself or his agents, did ship and hire one Tellef Tellefson to serve as fireman on board the said steamtug for and during her said various voyages and trips and from and over the bar at Yaquina bay and to the Pacific ocean at the rate of $65 per month, and that for the due performance of said voyages Tellef Tellefson always stood ready and willing on his part; that no shipping articles were signed by said Tellef Tellefson, said agreement being made verbally, and that in pursuance of said agreement said Tellef Tellefson immediately entered the service of said steamtug as aforesaid.

Article III.

That during the various times between the said — day of October, 1889, and the 17th day of March, 1893, said steamtug was engaged in various voyages in towing vessels as aforesaid until the said 17th day of March, 1893, when said steamtug was tied up and said Tellef Tellefson discharged from the services of said vessel.

Article IV.

That during the whole time said Tellefson was in the services of said steamtug he well and truly performed his duties according
32 to his best ability, and was obedient to all lawful demands of the said master and of other officers of said steamtug, and deserves and ought to be paid amounting to the sum of $358.02, but, although the same has been demanded of the said master, he refuses to pay them or any part thereof, and there is now due the said sum of $358.02.

Article V.

That by reason of the premises the said Tellef Tellefson acquired a lien upon said steamtug Resolute for the sum of $358.02, and that on the — day of March, 1894, said Tellef Tellefson, for a valuable consideration, assigned, transferred, and set over to your libellant his claim and account against the said steamtug Resolute, together with his right to hold a lien upon said steamtug for the payment of the same.

Article VI.

That all and singular the premises are true and within the admiralty and maritime jurisdiction of the United States and of this honorable court, and that at all the times hereinbefore mentioned said steamtug was in charge of a receiver appointed by the circuit court of the State of Oregon for Benton county; steamtug has since been discharged from said receivership.

Wherefore your libellant prays this honorable court that process in due form of law according to the course of courts of admiralty and of this honorable court and in cases of admiralty and maritime jurisdiction may issue against the said steamtug, her engine, boilers, machinery, tackle, apparel, and furniture, and that all persons claiming any right, title, or interest therein may be cited to appear and answer upon oath all the matters aforesaid, and that this honorable court will be pleased to decree the payment of the wages claimed herein, to wit, the sum of $1,181.52, and with costs,
33 and that said vessel may be condemned and sold to pay the same, and that the libellant may have such other and further relief in the premises as in law and justice he may be entitled to receive.

JOHN T. WHALLEY AND
LORD & POTTER,
Proctors for Libellant.

STATE OF OREGON, }
County of Multnomah, } ss:

I, Charles F. Lord, being first duly sworn, say that I am one of proctors for the libellant in the above entitled suit, and that the foregoing amended libel is true, as I verily believe; that I make this verification for the reason that the libellant is now without this district.

(Signed) CHAS. F. LORD.

Subscribed and sworn to before me this 27th day of April, 1895.
[SEAL.] (Signed) T. S. POTTER,
Notary Public for Oregon.

STATE OF OREGON, }
Multnomah County, } ss:

Due service of the within amended libel is hereby admitted in Multnomah county this 27th day of April, A. D. 1895.

WHALLEY & MUIR,
Attorneys for the Steamtug Resolute.

Endorsed: Filed May 4, 1895. E. D. McKee, clerk.

34 And afterwards, to wit, on the 4th day of May, 1895, there *was* duly filed in said court exceptions to amended libel in words and figures as follows, to wit:

35 In the District Court of the United States for the District of Oregon.

GEORGE DOWSETT, Libellant,
vs.
THE STEAMTUG RESOLUTE, Respondent; A. B. HAMMOND and E. L. BONNER, Claimants.

To the Honorable Charles B. Bellinger, judge of the district court of the United States for the district of Oregon:

The exceptions of A. B. Hammond and E. L. Bonner, claimants herein, to the libel of the said libellants allege that the said libel is informal and insufficient as follows:

First. That the same shows that at the time the said libellant and at the time the said Tellef Tellefson mentioned therein were employed the said steamtug Resolute was in charge of and being operated by a receiver of the Oregon Pacific Railroad Company, a corporation, the owner of said steamtug, said receiver having been duly appointed by the circuit court of the State of Oregon for Benton county, and that all of the services performed by said libellant and said Tellef Tellefson mentioned in said libel were performed while said steamtug was in possession of and being operated by said receiver, and that no maritime or other lien arose by reason of such employment or the rendition of said services.

Second. That the said libel shows that this court has no jurisdiction in the premises.

Portland, Or., May 4th, 1895.

WHALLEY & MUIR,
Proctors for Claimants.

36 STATE OF OREGON, } ss:
County of Multnomah. }

Due service of the within exceptions is hereby accepted, in Multnomah county, Oregon, this 4th day of May, 1895, by receiving a copy thereof, duly certified to as such by Wm. T. Muir, of proctors for claimant.

JOHN T. WHALLEY AND
LORD & POTTER,
Attorneys for Libellant.

Endorsed: Filed May 4, 1895. E. D. McKee, clerk.

37 And afterwards, to wit, on the 13th day of May, 1895, there was duly filed in said court a notice of motion in words and figures as follows, to wit:

38 In the District Court of the United States for the District of Oregon. In Admiralty. (*In Rem.*)

THE STEAMTUG RESOLUTE.

To Hon. John W. Whalley, William T. Muir, attorneys or proctors for The Steamtug Resolute, the claimants herein:

Please take notice that on Monday, the 13th day of May, A. D. 1895, at the hour of 11 o'clock a. m., and in the court-rooms of said court, we shall move the court for an order setting a time for argument upon the exceptions filed herein.

JOHN T. WHALLEY AND
LORD AND POTTER,
Proctors for Libellant, George Dowsett.

STATE OF OREGON, }
Multnomah County, } *ss:*

Due service of the within notice of motion is hereby admitted, in Multnomah county, this 7th day of May, A. D. 1895.

WHALLEY & MUIR,
Attorneys for Claimants of Steamtug Resolute.

Endorsed: Filed May 13, 1395. E. D. McKee, clerk.

39 And afterwards, to wit, on Monday, the 10th day of June, 1895, the same being the 84th judicial day of the regular March term of said court—present, the Honorable Charles B. Bellinger, United States district judge, presiding—the following proceedings were had in said case, to wit:

40 In the District Court of the United States for the District of Oregon.

THE STEAMER "RESOLUTE"—GEORGE DOWSETT, Libellant. No. 3732

JUNE 10, 1895.

Now, at this day, on motion of Mr. Wm. T. Muir, of counsel for claimants, it is ordered that this cause be, and the same is hereby, set for hearing on exceptions to the libel on Wednesday, June 19, 1895.

41 And afterwards, to wit, on Saturday, the 13th day of July, 1895, the same being the 11th judicial day of the regular July term of said court—present, the Honorable Charles B. Bellinger, United States district judge, presiding—the following proceedings were had in said case, to wit:

42 In the District Court of the United States for the District of Oregon.

THE STEAMTUG "RESOLUTE"—GEORGE DOWSETT, Libellant. No. 3732.

JULY 13, 1895.

Now, at this day, on motion of Mr. Wm. T. Muir, of counsel for the claimant-, it is ordered that this cause be, and the same is hereby, set for hearing on exceptions to the libel on Wednesday, July 24, 1895.

43 And afterwards, to wit, on Wednesday, the 24th day of July, 1895, the same being the 20th judicial day of the regular July term of said court—present, the Honorable Charles B. Bellinger, United States district judge, presiding—the following proceedings were had in said case, to wit:

44 In the District Court of the United States for the District of Oregon.

THE TUG "RESOLUTE"—GEORGE DOWSETT, Libellant. No. 3932.

JULY 24, 1895.

Now, at this day, comes the libellant, by Mr. Charles F. Lord, of counsel, and the claimants, by Mr. W. T. Muir and Mr. J. R. Bryson, of counsel, and, on motion of said claimants, it is ordered that this cause be, and the same is hereby, set for hearing on the exceptions to the libel on Tuesday, August 6, 1895.

45 And afterwards, to wit, on Tuesday, the 6th day of August, 1895, the same being the 31st judicial day of the regular July term of said court—present, the Honorable Charles B. Bellinger, United States district judge, presiding—the following proceedings were had in said case, to wit:

46 In the District Court of the United States for the District of Oregon.

THE TUG RESOLUTE—GEORGE DOWSETT, Libellant. No. 3732.

AUGUST 6, 1895.

Now, at this day, comes the libellant, by Mr. Charles F. Lord, of counsel, and the claimants, by Mr. W. T. Muir and Mr. J. R. Bryson, of counsel, and thereupon this cause comes on to be heard upon the exceptions to the libel herein, and the court, having heard the arguments of counsel, will advise thereof; whereupon it is ordered that said libellant be, and he is hereby, allowed to file an amended libel herein, and said claimants be, and they are hereby, allowed to file exceptions to said amended libel.

47 And afterwards, to wit, on Tuesday, the 24th day of September, 1895, the same being the 73d judicial day of the

regular July term of said court—present, the Honorable Charles B. Bellinger, United States district judge, presiding—the following proceedings were had in said case, to wit:

48 In the District Court of the United States for the District of Oregon.

THE TUG RESOLUTE—GEORGE DOWSETT, Libellant. No. 3732.

SEPTEMBER 24, 1895.

This cause was heard upon the exceptions to the libel and was argued by Mr. Charles F. Lord, of counsel for the libellant, and by Mr. W. T. Muir and Mr. J. R. Bryson, of counsel for the claimants. On consideration whereof it is ordered and adjudged that said exceptions be, and the same are hereby, overruled: and on motion of said claimants it is ordered that they be, and they are hereby, allowed ten days from this date in which to answer the libel herein.

49 And afterwards, to wit, on the 12th day of November, 1895, there was duly filed in said court an amended libel in words and figures as follows, to wit:

50 In the District Court of the United States for the District of Oregon. In Admiralty. (*In Rem.*)

THE STEAMTUG RESOLUTE—GEORGE DOWSETT, Libellant.

To the Honorable Charles B. Bellinger, judge of the district court of the United States for the district of Oregon:

The amended libel of Geo. Dowsett, of the city and county of San Francisco, State of California, against the steamtug "Resolute," whereof said Geo. Dowsett was lately chief engineer and whereof Charles Emerson is or lately was her master, her steam-engines, boilers, machinery, tackle, apparel, and furniture, and also against all persons lawfully claiming for their interest therein, in a cause of subtraction of wages, civil and maritime, filed by leave of court first had, showeth:

Article 1.

That your libellant, Geo. Dowsett, is a citizen of the United States and a resident of the State of California.

Article 2.

That the steamtug "Resolute" was at all the times hereinafter mentioned run and operated as a steamtug or towboat in towing vessels and barges on and over the bar between Yaquina bay and the Pacific ocean and the waters tributary thereto and within the district of Oregon, and that said steamtug is now within said district.

Article 3.

That during all the times hereinafter mentioned the steamtug "Resolute" was owned by the Oregon Pacific Railroad Company,

a corporation organized and existing under and by virtue of the laws of the State of Oregon and engaged in owning and building and operating a railway and steamboats within the State of Oregon and on and over the Pacific ocean.

51 Article 4.

That during all the times hereinafter mentioned the steamtug "Resolute" was in the possession of and under the control of certain receivers of said Oregon Pacific Railroad Co. duly appointed by the circuit court of the State of Oregon for the county of Benton in a certain suit wherein The Farmers' Loan and Trust Company, trustees, was plaintiff and the said Oregon Pacific Railroad Co. and The Willamette Valley and Coast Railroad Company were defendants.

Article 5.

That by the order of said court appointing the receivers of *of* said defendants said receivers were required, authorized, and directed to continue the operation of said railroad and steamtugs and vessels as a going concern in the transportation of freight and passengers as a common carrier and the said line of railroad in connection with the line of steamtugs and vessels sailing on and navigating the waters of Yaquina bay, the Pacific ocean, and navigable waters tributary thereto and within the district of Oregon.

Article 6.

That said steamship lines of said defendant were operated in connection with said railroad, including said steamtug "Resolute," — was, while so operated by said receivers and under said orders of said court, operated by said receivers as a necessary, integral part of said steamship line.

Article 7.

That between the — day of Oct., 1889, and the 1st day of Jan., 1894, your libellant was hired by said Oregon Pacific Railroad Company, acting through its said receivers so appointed as aforesaid, to serve as chief engineer on board said steamtug during her various voyages upon Yaquina bay and navigable waters within the district of Oregon and on and over the Pacific ocean at the rate
52 of $150.00 per month, and that for the due performance of said voyages the libellant has always stood ready and willing to obey and *dy* and all lawful orders and demands of the master, officers and owners of said steamtug and the receivers and their agents.

Article 8.

That said contract for service was made by verbal agreement, your libellant having signed no shipping articles, but, in pursuance of said agreement, immediately entered the services of said steamtug as chief engineer and so continued until the 17th day of March,

1893, when said steamtug was tied up and your libellant discharged from the service of said vessel without cause and without payment.

Article 9.

That during the whole time your libellant was in the service of said steamtug he well and truly performed his duties according to the best of his ability and was obedient to all lawful demands of the said master and other officers of said steamtug and deserves and ought to be paid a sum amounting to $825.50, but, although the same has been demanded of the said master and owners thereof, they refuse to pay the same or any part thereof, and there is now due to your libellant from said steamtug "Resolute" the sum of $825.50.

Article 10.

That since your libellant's discharge from the service of said steamtug and up to the — day of Jan., 1895, said steamtug "Resolute" was in the custody of the circuit court of the State of Oregon for the county of Benton, in charge of its receivers, and a seizure of said steamtug was refused by this court.

Article 11.

That on or about the — day of Jan., 1895, the property of
53 said Oregon Pacific railroad, including said steamtug, was, by order of said circuit court of the State of Oregon for the county of Benton, sold to the claimants herein, A. B. Hammond and E. L. Bonner, who now claim to be owners of said steamtug, but your libellant alleges the fact to be that the said purchasers, A. B. Hammond and E. L. Bonner, had notice of the claim of your libellant for a lien against said steamtug "Resolute," as hereinbefore set forth, at and prior to the time of their purchase of said steamtug.

Article 12.

That the receivers before mentioned of said Oregon Pacific Railroad Company were appointed at the instance and request of the Farmers' Loan and Trust Company, trustee, for the purpose of operating road and steamtug as a going concern and to prevent said property from depreciation in value, and that all the employees, and particularly your libellant, were employed by said receivers and their agents for that purpose.

Article 13.

That all and singular the premises are true and within the admiralty and maritime jurisdiction of the United States and of this honorable court.

Your libellant for a second cause of suit against the steamtug "Resolute" upon information and belief alleges:

Article 1.

That the steamtug "Resolute" was at all the times hereinafter mentioned run and operated as a steamtug or towboat in towing vessels and barges on and over the bar between Yaquina bay and the Pacific ocean and the waters tributary thereto and within the district of Oregon, and that said steamtug is now within said district.

Article 2.

That during all the times hereinafter mentioned the steamtug "Resolute" was owned by the Oregon Pacific Railroad Com-
54 pany, a corporation organized and existing under and by virtue of the laws of the State of Oregon and engaged in owning and building and operating a railway and steamboats within the State of Oregon and on and over the Pacific ocean.

Article 3.

That during all the times hereinafter mentioned the steamtug "Resolute" was in the possession of and under the control of certain receivers of said Oregon Pacific Railroad Co. duly appointed by the circuit court of the State of Oregon for the county of Benton in a certain suit wherein The Farmers' Loan and Trust Company, trustee, was plaintiff and *that* the said Oregon Pacific Railroad Co. and The Willamette Valley and Coast Railroad Company were defendants.

Article 4.

That by the order of said court appointing the receivers of said defendants *and* receivers were required, authorized, and directed to continue the operation of said railroad and steamtugs and vessels as a going concern in the transportation of freight and passengers as a common carrier and the said line of railroad in connection with the line of steamtugs and vessels sailing on and navigating the waters of Yaquina bay, the Pacific ocean, and navigable waters tributary thereto and within the district of Oregon.

Article 5.

That said steamship lines of said defendant were operated in connection with said railroad, including said steamtug "Resolute," and that said steamtug "Resolute" was, while so operated by said receivers and under said orders of said court, operated by said receivers as a necessary, integral part of said steamship line.

55 Article 6.

That between the 1st day of Jan., 1890, and the 1st day of Jan., 1894, Tellef Tellefson was hired by said Oregon Pacific Railroad Company, acting through its said receivers so appointed as aforesaid, to serve as fireman on board said steamtug during her various voyages upon Yaquina bay and navigable waters within the district of Oregon and on and over the Pacific ocean at the rate of $65.00 per

month, and that for the due performance of said voyages Tellef Tellefson has always stood ready and willing to obey any and all lawful orders and demands of the master, officers, and owners of said steamtug and the receivers and their agents.

Article 7.

That said contract for service was made by verbal agreement, Tellef Tellefson having signed no shipping articles, but, in pursuance of said agreement, immediately entered the services of said steamtug as fireman and so continued until the 17th day of March, 1893, when said steamtug was tied up and Tellef Tellefson discharged from the service of said vessel without cause or without payment.

Article 8.

That during the whole time Tellef Tellefson was in the service of said steamtug he well and truly performed his duties according to the best of his ability and was obedient to all lawful demands of the said master and other officers of said steamtug and deserves and ought to be paid a sum amounting to $358.02, but, although the same has been demanded of the said master, he refuses to pay the same or any part thereof, and there is now due Tellef Tellefson from said steamtug "Resolute" the sum of $358.02.

Article 9.

That since Tellef Tellefson's discharge from the service of
56 said steamtug and up to the — day of Jan., 1895, said steamtug "Resolute" was in the custody of the circuit court of the State of Oregon for the county of Benton, in charge of its receivers, and a seizure of said steamtug was refused by this court.

Article 10.

That on or about the — day of Jan., 1895, the property of said Oregon Pacific railroad, including said steamtug was by the order of said circuit court of the State of Oregon for the county of Benton sold to the claimants herein, A. H. Hammond and E. L. Bonner, who now claim to be owners of said steamtug, but Tellef Tellefson alleges the fact to be that the said purchasers, A. H. Hammond and E. L. Bonner, had notice of the claim of Tellef Tellefson for a lien against said steamtug "Resolute," as hereinbefore set forth, at and prior to the time of their purchase of said steamtug.

Article 11.

That the receivers before mentioned of said Oregon Pacific Railroad Co. were appointed at the instance and request of the Farmers' Loan and Trust Co., trustee, for the use and purpose of operating road and steamtug as a going concern and to prevent said property from depreciation in value, and that all the employees, and particularly Tellef Tellefson, *were* employed by said receivers and their agents for that purpose.

Article 12.

That all and singular the premises are true and within the admiralty and maritime jurisdiction of this honorable court.

Article 13.

That by reason of the premises the said Tellef Tellefson acquired a lien upon said steamtug "Resolute" for the sum of $358.02, and that on the — day of March, 1894, said Tellef Tellefson, for a
57 valuable consideration, assigned, transferred, and set over to your libellant his claim and account against the said steamtug "Resolute," together with his right to hold a lien upon said steamtug for the payment of the same, and that your libellant is now the owner and holder of the same.

Wherefore your libellant prays this honorable court that process in due form of law, according to the course of courts of admiralty and of this honorable court and in cases of admiralty and maritime jurisdiction, may issue against the said steamtug, her engines, boilers, machinery, tackle, apparel, and furniture, and that all persons claiming any right, title, or interest therein may be cited to appear and answer upon oath all matters aforesaid, and that this honorable court will be pleased to decree the payment of the wages claimed herein, to wit, the sum of $1,181.52, and with costs, and that said vessel may be condemned and sold to pay the same, and that the libellant may have such other and further relief in the premises as in law and justice he may be entitled to receive.

JOHN T. WHALLEY AND
LORD & POTTER,
Proctors for the Libellant.

STATE OF OREGON, } ss:
Multnomah County, }

I, John T. Whalley, being first duly sworn, say that I am one of the proctors for the libellant in the above-entitled suit, and that the foregoing amended libel is true as I verily believe; that I make this verification for the reason that said libellant is now without this district.

JOHN T. WHALLEY.

Subscribed and sworn to before me this 19th day of October, 1895.

CHAS. F. LORD,
Notary Public for Oregon.

[SEAL.]

58 STATE OF OREGON, } ss:
Multnomah County, }

Due service of the within amended libel is hereby admitted, in Multnomah county, this 19th day of Octo., A. D. 1895.

WHALLEY & MUIR,
Proctors for Claimants.

Endorsed: Filed November 12, 1895. E. D. McKee, clerk.

59 And, to wit, on the 12th day of August, 1895, there *was* duly filed in said court exceptions to amended libel in words and figures as follows, to wit:

60 In the District Court of the United States for the District of Oregon.

GEORGE DOWSETT, Libellant,
vs.
THE STEAMTUG RESOLUTE, Respondent; A. B. HAMMOND and E. L. BONNER, Claimants.

To the Honorable Charles B. Bellinger, judge of the district court of the United States for the district of Oregon:

The amended exceptions of A. B. Hammond and E. L. Bonner, claimants herein, to the amended libel of said libellants filed by leave of court and consent of parties, allege that the said libel is informal and insufficient as follows:

First. That the same shows that at the time the said libellant and *and* at the time the said Tellef Tellefson, mentioned therein, were employed the said steamtug Resolute was in charge of and being operated by a receiver of the Oregon Pacific Railroad Company, a corporation, the owner of said steamtug, said receiver having been duly appointed by the circuit court of the State of Oregon for Benton county, and that all of the services performed by said libellant and said Tellef Tellefson, mentioned in said libel, were performed while said steamtug was in the possession of and being operated by said receiver, and that no maritime or other lien arose by reason of such employment or the rendition of said services.

Second. That the said libel shows that this court has no jurisdiction in the premises in either the alleged first or second cause of suit.

Third. That said libel shows that the claim of said George Dowsett mentioned in said libel in an alleged second cause of suit, amounting to the alleged sum of $358.02, has been assigned to said libellant, Geo. Dowsett, and that claims of the character
61 described, when assigned, are stripped of the privilege of a lien upon the vessel.

Portland, Or., Aug. 12, 1895.

J. W. WHALLEY,
WM. T. MUIR,
J. R. BRYSON,
Proctors for Claimants.

STATE OF OREGON, } ss.
County of Multnomah, }

Due service of the within amended exceptions *are* hereby accepted, in Multnomah county, Oregon, this 8th day of Aug., 1895, by receiving a copy thereof duly certified to as such by Wm. T. Muir, of proctors for claimants.

CHAS. F. LORD,
Proctor for Libellants.

Endorsed: Filed August 12, 1895. E. D. McKee, clerk.

62 And afterwards, to wit, on the 12th day of November, 1895, there was duly filed in said court a stipulation in words and figures as follows, to wit:

63 In the District Court of the United States for the District of Oregon. In Admiralty. (*In Rem.*)

THE STEAMTUG RESOLUTE.

It is hereby stipulated and agreed by and between the proctors for the libellants and claimants that this cause was heard in the district court upon the amended libel and the amended exceptions thereto, and that when said exceptions were overruled the claimants did not desire to answer, but desired to stand upon said exceptions.

JOHN T. WHALLEY &
LORD & POTTER,
Proctors for Libellants.
WM. T. MUIR,
Of Proctors for Claimants.

Endorsed: Filed November 12, 1895. E. D. McKee, clerk.

64 And afterwards, to wit, on Tuesday, the 19th day of November, 1895, the same being the 14th judicial day of the regular November term of said court—present, the Honorable Charles B. Bellinger, United States district judge, presiding—the following proceedings were had in said case, to wit:

65 In the District Court of the United States for the District of Oregon. In Admiralty. (*In Rem.*)

THE STEAMTUG RESOLUTE—GEO. DOWSETT, Libellant.

This cause was heard upon the amended libel of Geo. Dowsett and the amended exceptions thereto filed by the claimants, A. B. Hammond and E. L. Bonner, and the said exceptions and each of them were heretofore overruled and the claimants obtained leave to answer; and it now appearing to the court that the claimants have failed to answer the said libel within the time allowed by the order of the court heretofore entered, and that, as appears by the stipulation of the proctor for the claimants on file, the said claimants do not desire to answer said libel and elect to stand upon said exceptions, and the said claimants being now in default, said default, on motion of Lord & Potter, proctors for said libellant, is hereby entered against said steamtug Resolute and against said claimants, A. B. Hammond and E. L. Bonner; and it further appearing to the court that the said steamtug Resolute, her boilers, engines, machinery, tackle, apparel, and furniture, are indebted to the libellant herein, as set forth in his said libel, in the following sums, namely:

For services performed on said steamtug Resolute in the sum of $825.50;

And it further appearing to the court that the said steamtug Resolute, her boilers, engines, machinery, tackle, apparel, furniture, became indebted to one Tellef Tellefson on the 17th day of March, 1893, in the sum of $358.02 for services performed on board said steamtug Resolute, and that prior to the filing of this libel the said Tellef Tellefson, for a valuable consideration, assigned, trans-
66 ferred, and set over to the libellant, George Dowsett, his said claim and account against said steamtug Resolute, together with the right to hold a lien upon said steamtug for the payment of the same;

And it further appearing to the court that the said steamtug Resolute was released from arrest in this cause upon the stipulation of the claimants, A. B. Hammond and E. L. Bonner, with Henry Failing as surety in the sum of $2,500.00:

It is therefore pronounced, adjudged, and decreed that the said libellant have and recover from the said claimants, A. B. Hammond and E. L. Bonner, and from each of them the sum of $1,183.52 in gold coin of the United States, and that said libellant further recover from said claimants and from each of them their costs and disbursements herein taxed and fixed by the court in the sum of $102.50.

And it is further ordered, considered, and adjudged by the court that in case said sum be not paid into the registry of this court within thirty days from the date of this decree that execution therefor issue against the said claimant and the said Henry Failing, surety, upon the said bond given for the release of the said vessel.

It is further ordered that the clerk distribute said amount as follows:

First, to the payment of the costs and disbursements herein.

Second, to the payment of the amount herein decreed to be due said libellant.

CHARLES B. BELLINGER, *Judge.*

Endorsed: Filed November 19, 1895. E. D. McKee, clerk.

67 And afterwards, to wit, on the 20th day of November, 1895, there was duly filed in said court a cost bill in words and figures as follows, to wit:

68 In the District Court of the United States for the District of Oregon.

GEO. DOWSETT, Libellant, Plaintiff,
vs.
THE TUG RESOLUTE—A. B. HAMMOND and —— BONNER, Defendants & Claimants. } No. —.

Statement of disbursements claimed by the libellant in the above-entitled cause, viz:

Clerk's fees	$16 80
Marshal's fees	28 00

Costs in State circuit court.....	
Attorney's fee, including argument on exceptions.....	25 00
Attorney's fee for taking depositions, at $2.50 each.....	
Depositions.....	
Examiner's fees.....	
Referee's fees.....	
Witness' fees.....	
Publication of monition.....	32 70
Total taxed at.....	102 50

——— ———, *Clerk.*

DISTRICT OF OREGON, *ss:*

I, Chas. F. Lord, one of libellant's proctors, being duly sworn, on my oath say that I am one of the attorneys for the libellants in the above-entitled cause; that the disbursements set forth herein have been actually and necessarily incurred in the prosecution of this suit, and that said libellant is entitled to recover the same from the claimants, as I verily believe.

(Signed) CHAS. F. LORD.

Subscribed and sworn to before me this 19th of Dec., 1895.

[SEAL.] T. S. POTTER,
Notary Public for Oregon.

Service accepted.

WM. T. MUIR,
Of Proctors for Claimants.

Endorsed: Filed November 20, 1895. E. D. McKee, clerk.

69 And, to wit, on the 19th day of December, 1895, there was duly filed in said court a notice of appeal in words and figures as follows, to wit:

70 In the District Court of the United States for the District of Oregon. In Admiralty.

GEORGE DOWSETT, Libellant,
vs.
THE STEAMTUG RESOLUTE—A. B. HAMMOND and E. L. BONNER, Claimants and Appellants.

The above-named claimants, A. B. Hammond and E. L. Bonner, conceiving themselves aggrieved by the final judgment entered herein on the 19th day of November, 1895, in the above-entitled proceedings, do hereby appeal from said final judgment to the Supreme Court of the United States, and they pray that this their appeal may be allowed, and that the question of the jurisdiction of the above-entitled court to render the said judgment be certified to the Supreme Court of the United States, and that a transcript of the record and proceedings and papers upon which said judgment was

was made, duly authenticated, may be sent to the Supreme Court of the United States.

Portland, Or., Dec. 18, 1895.

J. W. WHALLEY &
WM. T. MUIR,
Proctors for Claimants and Appellants.

STATE OF OREGON, } ss:
County of Multnomah, }

Due service of the within petition for appeal is hereby accepted, in Multnomah county, Oregon, this 19 day of December, 1895, by receiving a copy thereof duly certified to as such by Wm. T. Muir, of attorneys for appellants.

CHAS. *L.* LORD,
Of Attorneys for Libellant.

Endorsed: Filed December 19, 1895. E. D. McKee, clerk.

71 And afterwards, to wit, on the 19th day of December, 1895, there was duly filed in said court an assignment of errors in words and figures as follows, to wit:

72 In the District Court of the United States for the District of Oregon. In Admiralty.

GEORGE DOWSETT, Libellant,
vs.
THE STEAMTUG RESOLUTE—A. B. HAMMOND and E. L. BONNER, Claimants and Appellants.

Come now the said A. B. Hammond and E. L. Bonner, and having appealed from the final judgment and decree of the district court of the United States for the district of Oregon to the Supreme Court of the United States in the above-entitled cause of contract, civil and maritime, assigns the following as the errors upon which they intend to rely on said appeal:

First. The district court of the United States for the district of Oregon erred in overruling the exceptions and each of them to the amended libel.

Second. The district court of the United States for the district of Oregon erred in holding that the performance of the services or any of them mentioned in the amended libel gave rise to a maritime lien.

Third. The district court of the United States for the district of Oregon erred in holding that the libellant was entitled to and had a maritime lien on the said steamtug Resolute for the sum due on account of the services mentioned in the amended libel.

Fourth. The district court of the United States for the district of Oregon erred in adjudging and decreeing that the said steamtug Resolute be sold in said proceedings to satisfy the said claim of said libellant.

Fifth. The district court of the United States for the district of Oregon erred in holding that the said court had jurisdiction
73 in the said proceedings as to the claim of the libellant.

Sixth. The said district court of the United States for the district of Oregon erred in holding that libellant, George Dowsett, had acquired or was entitled to a lien upon the said steamtug Resolute on account of the services rendered by said Tellef Tellefson mentioned in said amended libel and under the claim *the* therefor assigned by said Tellef Tellefson to said George Dowsett.

Portland, Or., Dec. 19, 1895.

J. W. WHALLEY &
WM. T. MUIR,
Proctors for Claimants and Appellants.

STATE OF OREGON, } ss:
County of Multnomah, }

Due service of the within assignment of errors is hereby accepted, in Multnomah county, Oregon, this 19 day of December, 1895, by receiving a copy thereof duly certified to as such by Wm. T. Muir, of attorney for appellants.

CHAS. F. LORD,
Of Attorneys for Libellant.

Endorsed: Filed December 19th, 1895. E. D. McKee, clerk.

74 And afterwards, to wit, on the 19th day of December, 1895, there was duly filed in said court an undertaking on appeal in words and figures as follows, to wit:

75 In the District Court of the United States for the District of Oregon. In Admiralty.

GEORGE DOWSETT, Libellant,
vs.
THE STEAMTUG RESOLUTE—A. B. HAMMOND and E. L. BONNER, Claimants & Appellants.

Know all men by these presents that we, A. B. Hammond and E. L. Bonner, the above-named claimants and appellants, principals, and Henry Failing, of the city of Portland, Multnomah county, Oregon, surety, are held and firmly bound unto the above-named George Dowsett in the sum of eleven hundred eighty-three and $\frac{52}{100}$ dollars in gold coin of the United States, with interest and costs and disbursements; for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated the 18th day of December, 1895.

Whereas the above-named A. B. Hammond and E. L. Bonner have prosecuted an appeal to the Supreme Court of the United States to reverse the decree rendered in the above-entitled cause by

the judge of the district court of the United States for the district of Oregon:

Now, therefore, the condition of the obligation is such that if the above-named A. B. Hammond and E. L. Bonner shall prosecute said appeal to effect and answer any judgment and all damages and costs if they fail to make said appeal good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

A. B. HAMMOND, [SEAL.]
E. L. BONNER, *Principals*, [SEAL.]
By WM. T. MUIR, *Of Proctors.*
76 HENRY FAILING, *Surety.* [SEAL.]

Approved:
CHARLES B. BELLINGER, *Judge.*

Endorsed: Filed December 19, 1895. E. D. McKee, clerk.

77 And afterwards, to wit, on the 19th day of December, 1895, there was duly filed in said court an allowance of appeal and certificate of U. S. district judge in words and figures as follows, to wit:

78 In the District Court of the United States for the District of Oregon. In Admiralty.

GEORGE DOWSETT, Libellant,
vs.
THE STEAMTUG RESOLUTE—A. B. HAMMOND and E. L. BONNER, Claimants and Appellants.

Be it remembered that on this day in the above-entitled cause came Wm. T. Muir, of proctors for claimants, and filed herein his assignment of errors and petition for an allowance of an appeal herein to the Supreme Court of the United States from the decree herein rendered on the 19th day of November, A. D. 1895; which decree is as follows, to wit:

79 "This cause was heard upon the amended libel of Geo. Dowsett and the amended exceptions thereto filed by the claimants A. B. Hammond and E. L. Bonner, and the said exceptions and each of them were heretofore overruled and the claimants obtained leave to answer; and it now appearing to the court that the claimants have failed to answer the said libel within the time allowed by the order of the court heretofore entered, and that, as appears by the stipulation of the proctor for the claimants on file, the said claimants do not desire to answer said libel and elect to stand upon said exceptions, and the said claimants being now in default, said default, on motion of Lord & Potter, proctors for said libellant, is hereby entered against said steamtug Resolute and against said claimants, A. B. Hammond and E. L. Bonner; and it further appearing to the court that the said steamtug Resolute, her boilers, engines, machinery, tackle, apparel, and furniture, are in-

debted to the libellant herein as set forth in his said libel in the following sums, namely:

For services performed on said steamtug Resolute in the sum of $825.50;

And it further appearing to the court that the said steamtug Resolute, her boilers, engines, machinery, tackle, apparel, furniture, became indebted to one Tellef Tellefson on the 17th day of March, 1893, in the sum of $358.02 for services performed on board said steamtug Resolute, and that prior to the filing of this libel the said Tellef Tellefson for a valuable consideration assigned, trans-

80 ferred, and set over to the libellant, George Dowsett, his said claim and account against said steamtug Resolute, together with the right to hold a lien upon said steamtug for the payment of the same;

And it further appearing to the court that the said steamtug Resolute was released from arrest in this cause upon the stipulation of the claimants, A. B. Hammond and E. L. Bonner, with Henry Failing as surety, in the sum of $2,500.00:

It is therefore pronounced, adjudged, and decreed that the said libellant have and recover from the said claimants, A. B. Hammond and E. L. Bonner, and from each of them, the sum of $1,183.52 in gold coin of the United States, and that said libellant further recover from said claimants and from each of them their costs and disbursements herein, taxed and fixed by the court in the sum of $102.50.

And it is further ordered, considered, and adjudged by the court that in case said sum be not paid into the registry of this court within thirty days from the date of this decree that execution therefor issue against the said claimant- and the said Henry Failing, surety, upon the said bond given for the release of the said vessel.

It is further ordered that the clerk distribute said amount as follows:

First. To the payment of the costs and disbursements herein.

Second. To the payment of the amount herein decreed to be due said libellant.

CHARLES B. BELLINGER, *Judge.*"

81 And in open court the said claimants, by their said proctors, prayed that said appeal be allowed, and tendered a bond, with sufficient surety, to the approval of the court, and which bond is hereby approved, to stay proceedings herein until said appeal shall have been determined; and thereupon the court hereby allows said appeal and approves said bond, and execution is hereby stayed until the determination of said appeal, and this court does hereby certify and make known unto the Supreme Court of the United States that the only question arising upon said appeal is the question as to whether or not, under the facts stated in the amended libel and the exceptions thereto, this court acquired or had jurisdiction to hear or pronounce the said decree.

And that the following is a copy of the said amended libel and the exceptions filed thereto:

82

Amended Libel.

"The amended libel of Geo. Dowsett, of the city and county of San Francisco, State of California, against the steamtug 'Resolute,' whereof said Geo. Dowsett was lately chief engineer and whereof Charles Emerson is or lately was her master, her steam-engines, boilers, machinery, tackle, apparel, and furniture, and also against all persons lawfully claiming for their interest therein in a cause of subtraction of wages, civil and maritime, filed by leave of court first had, showeth:

Article 1.

That your libellant, Geo. Dowsett, is a citizen of the United States and a resident of the State of California.

Article 2.

That the steamtug 'Resolute' was at all the times hereinafter mentioned run and operated as a steamtug or towboat in towing vessels and barges on and over the bar between Yaquina bay and the Pacific ocean and the waters tributary thereto and within the district of Oregon, and that said steamtug is now within said district.

Article 3.

That during all the times hereinafter mentioned the steamtug 'Resolute' was owned by the Oregon Pacific Railroad Company, a corporation organized and existing under and by virtue of the laws of the State of Oregon and engaged in owning and building and operating a railway and steamboats within the State of Oregon and on and over the Pacific ocean.

83

Article 4.

That during all the times hereinafter mentioned the steamtug 'Resolute' was in the possession of and under the control of certain receivers of said Oregon Pacific Railroad Co. duly appointed by the circuit court of the State of Oregon for the county of Benton in a certain suit wherein The Farmers' Loan and Trust Company, trustees, was plaintiff and the *the* said Oregon Pacific Railroad Co. and The Willamette Valley and Coast Railroad Company were defendants.

Article 5.

That by the order of said court appointing the receivers of *of* said defendants said receivers were required, authorized, and directed to continue the operation of said railroad and steamtugs and vessels as a going concern in the transportation of freight and passengers as a common carrier and the said line of railroad in connection with the line of steamtugs and vessels sailing on and navigating the waters of Yaquina bay, the Pacific ocean, and navigable waters tributary thereto and within the district of Oregon.

Article 6.

That said steamship lines of said defendant- were operated in connection with said railroad, including said steamtug 'Resolute,' and that said steamtug Resolute was, while so operated by said receivers and under said orders of said court, operated by said receivers as a necessary integral part of said steamship line.

Article 7.

That between the — day of Oct., 1889, and the 1st day of Jan., 1894, your libellant was hired by said Oregon Pacific Railroad Company, acting through its said receivers so appointed as aforesaid, to serve as chief engineer on board said steamtug during her various voyages upon Yaquina bay and navigable waters within the district of Oregon and on and over the Pacific ocean at the rate
84 of $150.00 per month, and that for the due performance of said voyages the libellant has always stood ready and willing to obey and/y and all lawful orders and demands of the master, officers, and owners of said steamtug and the receivers and their agents.

Article 8.

That said contract for service was made by verbal agreement, your libellant having signed no shipping articles, but, in pursuance of said agreement, immediately entered the services of said steamtug as chief engineer and so continued until the 17th day of March, 1893, when said steamtug was tied up and your libellant discharged from the service of said vessel without cause and without payment.

Article 9.

That during the whole time your libellant was in the service of said steamtug he well and truly performed his duties according to the best of his ability and was obedient to all lawful demands of the said master and other officers of said steamtug, and deserves and ought to be paid a sum amounting to $825.50; but, although the same has been demanded of the said master and owners thereof, they refuse to pay the same or any part thereof, and there is now due to your libellant from said steamtug 'Resolute' the sum of $825.50.

Article 10.

That since your libellant's discharge from the service of said steamtug and up to the — day of Jan., 1895, said steamtug 'Resolute' was in the custody of the circuit court of the State of Oregon for the county of Benton, in charge of its receivers, and a seizure of said steamtug was refused by this court.

Article 11.

That on or about the — day of Jan., 1895, the property of
85 said Oregon Pacific railroad, including said steamtug, was, by order of said circuit court of the State of Oregon for the

county of Benton, sold to the claimants herein, A. B. Hammond and E. L. Bonner, who now claim to be owners of said steamtug, but your libellant alleges the fact to be that the said purchasers, A. B. Hammond and E. L. Bonner, had notice of the claim of your libellant for a lien against said steamtug 'Resolute,' as hereinbefore set forth, at and prior to the time of their purchase of said steamtug.

Article 12.

That the receivers before mentioned of said Oregon Pacific Railroad Company were appointed at the instance and request of the Farmers' Loan and Trust Company, trustee, for the purpose of operating road and steamtug as a going concern, and to prevent said property from depreciation in value, and that all the employees, and particularly your libellant, were employed by said receivers and their agents for that purpose.

Article 13.

That all and singular the premises are true and within the admiralty and maritime jurisdiction of the United States and of this honorable court.

Your libellant for a second cause of suit against the steamtug 'Resolute' upon information and belief alleges:

Article 1.

That the steam tug 'Resolute' was at all the times hereinafter mentioned run and operated as a steamtug or towboat in towing vessels and barges on and over the bar between Yaquina bay and the Pacific ocean and the waters tributary thereto and within the district of Oregon, and that said steamtug is now within said district.

Article 2.

That during all the times hereinafter mentioned the steamtug 'Resolute' was owned by the Oregon Pacific Railroad
86 Company, a corporation organized and existing under and by virtue of the laws of the State of Oregon and engaged in owning and building and operating a railway and steamboats within the State of Oregon and on and over the Pacific ocean.

Article 3.

That during all the times hereinafter mentioned the steamtug 'Resolute' was in the possession of and under the control of certain receivers of said Oregon Pacific Railroad Co. duly appointed by the circuit court of the State of Oregon for the county of Benton in a certain suit wherein The Farmers' Loan and Trust Company, trustee, was plaintiff and *that* the said Oregon Pacific Railroad Co. and The Willamette Valley and Coast Railroad Company were defendants.

Article 4.

That by the order of said court appointing the receivers of said defendants *and* receivers were required, authorized, and directed to continue the operation of said railroad and steamtugs and vessels as a going concern in the transportation of freight and passengers as a common carrier and the said line of railroad in connection with the line of steamtugs and vessels sailing on and navigating the waters of Yaquina bay, the Pacific ocean, and navigable waters tributary thereto and within the district of Oregon.

Article 5.

That said steamship lines of said defendant were operated in connection with said railroad, including said steamtug 'Resolute,' and that said steamtug 'Resolute' was, while so operated by said receivers and under said orders of said court, operated by said receivers as a necessary, integral part of said steamship line.

87 Article 6.

That between the 1st day of Jan., 1890, and the 1st day of Jan., 1894, Tellef Tellefson was hired by said Oregon Pacific Railroad Company, acting through its said receivers so appointed as aforesaid, to serve as fireman on board said steamer during her various voyages upon Yaquina bay and navigable waters within the district of Oregon and on and over the Pacific ocean at the rate of $65.00 per month, and that for the due performance of said voyages Tellef Tellefson has always stood ready and willing to obey any and all lawful orders and demands of the master, officers, and owners of said steamtug and the receivers and their agents.

Article 7.

That said contract for service was made by verbal agreement, Tellef Tellefson having signed no shipping articles, but, in pursuance of said agreement, immediately entered the services of said steamtug as fireman and so continued until the 17th day of March, 1893, when said steamtug was tied up and Tellef Tellefson discharged from the service of said vessel without cause or without payment.

Article 8.

That during the whole time Tellef Tellefson was in the service of said steamtug he well and truly performed his duties according to the best of his ability and was obedient to all lawful demands of the said master and other officers of said steamtug and deserves and ought to be paid a sum amounting to $358.02, but, although the same has been demanded of the said master, he refuses to pay the same or any part thereof, and there is now due Tellef Tellefson from said steamtug 'Resolute' the sum of $358.02.

Article 9.

88 That since Tellef Tellefson's discharge from the service of said steamtug and up to the — day of Jan., 1895, said steamtug 'Resolute' was in the custody of the circuit court of the State of Oregon for the county of Benton, in charge of its receivers, and a seizure of said steamtug was refused by this court.

Article 10.

That on or about the — day of Jan., 1895, the property of said Oregon Pacific railroad, including said steamtug, was by the order of said circuit court of the State of Oregon for the county of Benton sold to the claimants herein, A. H. Hammond and E. L. Bonner, who now claim to be the owners of said steamtug, but Tellef Tellefson alleges the fact to be that the said purchasers, A. H. Hammond and E. L. Bonner, had notice of the claim of Tellef Tellefson for a lien against said steamtug 'Resolute,' as hereinbefore set forth, at and prior to the time of their purchase of said steamtug.

Article 11.

That the receivers before mentioned of said Oregon Pacific Railroad Co. were appointed at the instance and request of the Farmers' Loan and Trust Co., trustee, for the use and purpose of operating road and steamtug as a going concern and to prevent said property from depreciation in value, and that all the employees, and particularly Tellef Tellefson, were employed by said receivers and their agents for that purpose.

Article 12.

That all and singular the premises are true and within the admiralty and maritime jurisdiction of this honorable court.

Article 13.

That by reason of the premises the said Tellef Tellefson acquired a lien upon said steamtug 'Resolute' for the sum of $358.02, and that on the — day of March, 1894, said Tellef Tellefson, for
89 a valuation consideration, assigned, transferred, and set over to your libellant his claim and account against the said steamtug 'Resolute,' together with his right to hold a lien upon said steamtug for the payment of the same, and that your libellant is now the owner and holder of the same.

Wherefore your libellant prays this honorable court that process in due form of law, according to the course of courts of admiralty and of this honorable court and in cases of admiralty and maritime jurisdiction, may issue against the said steamtug, her engines, boilers, machinery, tackle, apparel, and furniture, and that all persons claiming any right, title, or interest therein may be cited to appear and answer upon oath all matters aforesaid, and that this honorable court will be pleased to decree the payment of the wages

claimed herein, to wit, the sum of $1,181.52, and with costs, and that said vessel may be condemned and sold to pay the same, and that the libellant may have such other and further relief in the premises as in law and justice he may be entitled to receive."

90 "*Amended Exceptions.*

The amended exceptions of A. B. Hammond and E. L. Bonner, claimants herein, to the amended libel of said libellants, filed by leave of court and consent of parties, alleges that the said libel is informal and insufficient as follows:

First. That the same shows that at the time the said libellant and at the time the said Tellef Tellefson mentioned therein were employed the said steamtug Resolute was in charge of and being operated by a receiver of the Oregon Pacific Railroad Company, a corporation, the owner of said steamtug, said receiver having been duly appointed by the circuit court of the State of Oregon for Benton county, and that all of the services performed by said libellant and said Tellef Tellefson mentioned in said libel were performed while said steamtug was in possession of and being operated by said receiver, and that no maritime or other lien arose by reason of such employment or the rendition of said services.

Second. That the said libel shows that this court has no jurisdiction in the premises in either the alleged first or second cause of suit.

Third. That said libel shows that the claim of said George Dowsell mentioned in said libel, in an alleged second cause of suit, amounting to the alleged sum of $358.02, has been assigned to said libellant, George Dowsett, and that claims of the character described, when assigned, are stripped of the privilege of a lien upon the vessel."

CHARLES B. BELLINGER, *Judge.*

STATE OF OREGON, }
County of Multnomah, } *ss:*

Due service of the within allowance of appeal is hereby accepted, in Multnomah county, Oregon, this 19 day of December, 1895, by receiving a copy thereof, duly certified to as such, by Wm. T. Muir, of attorneys for appellants.

CHAS. F. LORD,
Of Attorneys for Libellant.

Endorsed: Filed December 19, 1895. E. D. McKee, clerk.

91 And afterwards, to wit, on Monday, the 20th day of January, 1896, the same being the 64th judicial day of the regular November term of said court—present, the Honorable Charles B. Bellinger, United States district judge, presiding—the following proceedings were had in said case, to wit:

92 In the District Court of the United States for the District of Oregon.

THE TUG RESOLUTE—GEORGE DOWSETT, Libellant; E. L. BONNER and A. B. HAMMOND, Claimants. No. 3732.

JANUARY 20, 1896.

Now, at this day, on motion of Mr. William T. Muir, of counsel for the claimants, it is ordered that the time for filing the transcript of record in this cause on appeal to the Supreme Court of the United States be, and the same is hereby, extended thirty days.

CHARLES B. BELLINGER, *Judge.*

93 DISTRICT OF OREGON, *ss:*

I, E. D. McKee, clerk of the United States district court for the district of Oregon, do hereby certify that the foregoing transcript of record and proceedings in cause No. 3732, George Dowsett *vs.* The Steamtug Resolute, is a full, true, and correct transcript of the original record and proceedings in said cause as the same appear at my office and in my custody.

In testimony whereof I have hereunto set my hand and affixed the seal of said district court, at Portland, in said district, this January 31, 1896.

[Seal United States District Court, Oregon.]

E. D. McKEE,
Clerk United States District Court for the District of Oregon,
By G. H. MARSH,
Deputy Clerk.

Endorsed on cover: Case No. 16,199. Oregon D. C. U. S. Term No., 135. The Steamtug "Resolute"—A. B. Hammond and E. L. Bonner, claimants, appellants, *vs.* George Dowsett. Filed February 21, 1896.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1897.

No. 136.

THE STEAMTUG "RESOLUTE"—A. B. HAMMOND AND E. L. BONNER, CLAIMANTS, APPELLANTS,

vs.

HENRY E. WILSON, SYDNEY G. WOLFKILL, THOMAS NELSON, AND CHARLES JAHN.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF OREGON.

FILED FEBRUARY 21, 1898.

(16,200.)

160
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(16,200.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1897.

No. 136.

THE STEAMTUG "RESOLUTE"—A. B. HAMMOND AND E. L. BONNER, CLAIMANTS, APPELLANTS,

vs.

HENRY E. WILSON, SYDNEY G. WOLFKILL, THOMAS NELSON, AND CHARLES JAHN.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF OREGON.

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1 In the District Court of the United States for the District of Oregon. In Admiralty.

HENRY E. WILSON, SYDNEY G. WOLFKILL, THOMAS NELSON, and CHARLES JAHN, Libellants,
vs.
THE STEAMTUG RESOLUTE—A. B. HAMMOND & E. L. BONNER, Claimant- and Appellant-.

UNITED STATES OF AMERICA, *ss:*

To Henry E. Wilson, Sydney G. Wolfkill, Thomas Nelson, and Charles Jahn, the above-named libellants, and to Thomas O'Day and Louis H. Tarpley, proctors for said libellants:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States within sixty days from the date hereof, pursuant to an appeal filed in the office of the clerk of the district court of the United States for the district of Oregon, wherein A. B. Hammond & E. L. Bonner *is* appellant- and Henry R. Wilson, Sydney G. Wolfkill, Thomas Nelson, and Charles Jahn, the libellants above named, are respondents, to show cause, if any there be, why the judgment so appealed from should not be corrected and reversed and speedy justice should not be done to the parties in that behalf.

Witness the Hon. Melville W. Fuller, Chief Justice of the United States, this 22nd day of November, A. D. 1895.

CHARLES B. BELLINGER,
District Judge.

2 STATE OF OREGON, }
Multnomah County, } *ss:*

Due service of the within citation is hereby accepted this 4*nd* day of Dec., 1895.

Dated Dec. 4th, 1895.

THOS. O'DAY,
Of Proctors for Libellant-.

[Endorsed:] In the district court of the United States for the district of Oregon. In admiralty. Henry E. Wilson *et al.*, libellants & resp., *vs.* The Steamtug Resolute—The Oregon Central & Eastern Railroad Co., claimant & app. Citation. Filed Nov. 25, 1895. E. D. McKee, clerk U. S. district court. Whalley & Muir.

3 In the District Court of the United States for the District of Oregon, March Term, 1895.

Be it remembered that on the 20th day of March, 1895, there was duly filed in the district court of the United States for the district of Oregon a libel in words and figures as follows, to wit:

4 In the District Court of the United States for the District of Oregon. In Admiralty. (*In Rem.*)

To the Honorable Charles B. Bellinger, judge of the district court of the United States for the district of Oregon:

The libel of Henry E. Wilson, Sidney G. Wolfkill, Thomas Nelson, and Charles Jahn, of said district, mariners, late seamen on board the tug "Resolute," whereof one W. J. Ricketts lately was master, against said steamtug "Resolute," her boilers, engines, machinery, tackle, apparel, and furniture, also against all persons lawfully claiming said steamtug or lawfully intervening for their interest in said steamtug, in a cause of wages, civil and maritime, alleges as follows:

Article I.

That your libellants are citizens and inhabitants of the district of Oregon.

Article II.

That the steamtug "Resolute" was at all times hereinafter mentioned run and operated as a steamtug and towboat in towing vessels and barges on and over the bar between Yaquina bay and the Pacific ocean and waters tributary thereto within the district of Oregon and in the navigable waters within said district, and that said steamtug is now within said district of Oregon.

Article III.

That during the years from about January, 1892, until about January 1st, 1894, at the port of Yaquina bay, in the district of Oregon, libellants were employed, hired, and shipped to serve on said steamtug "Resolute," being hired by verbal contract
5 by the receiver of the Oregon Pacific Railway & Navigation Company in charge of and operating all of the property of said Oregon Pacific Railway Company, a corporation duly organized and incorporated under the laws of the State of Oregon, the said Oregon Pacific Railway Company being the owner or reputed owner of said steamtug "Resolute," and said receiver being in possession and operating said steamtug "Resolute," as hereinbefore set forth and stated.

Article IV.

That libellants served on said steamtug during said time under the instructions and charge of the master of said steamtug as follows: The libellant Henry E. Wilson, being engineer of said steamtug, at the agreed price of one hundred and fifty dollars ($150.00) per month; the libellant Thomas Nelson, being mate and assistant seaman on said steamtug, at the agreed price of seventy-five dollars ($75.00) per month; the libellant Charles Jahn, being a seaman in the capacity of sailor on said steamtug "Resolute," at the agreed price of sixty-five dollars ($65.00) per month; the libellant Sidney G. Wolfkill, being fireman on said steamtug, at the agree price of sixty-five dollars ($65.00) per month.

Article V.

That for the due performance of services on said steamtug libellants signed no shipping articles, but were employed under a verbal contract with the receiver or duly authorized agent, as hereinbefore stated, and with the consent and under the direction of the master and owners of said steamtug; that in pursuance of said employment the libellants entered into the service of said steamtug as such seamen, as aforesaid, on or about January 1st, 1892, and
6 continued therein until on or about December 17th, 1893, when they were discharged without just cause by the receiver of said steamtug, the said employment of said libellants being from month to month and said libellants being entitled under their said contract, as aforesaid, to payment of wages in pursuance thereof to and inclusive of the entire month of December, 1894.

Article VI.

During the whole time your libellants were in the service of said steamtug they well and truly performed their duties according to their best ability and in accordance with good seamanship and were obedient to all lawful demands of the said master, officers, and receiver of said steamtug and deserve and ought to be paid for their said services the following sums, due and owing since January 1st, 1894: To libellant Henry E. Wilson, five hundred and fifty-five dollars ($555.00), with interest thereon from said date; to libellant S. G. Wolfkill, two hundred forty and $\frac{50}{100}$ dollars ($240.50), with interest thereon from said date; to libellant Thomas Nelson, four hundred and forty-eight and $\frac{44}{100}$ dollars ($448.44), with interest thereon from said date; to libellant Charles Jahn, the sum of five hundred twenty-nine and $\frac{92}{100}$ dollars ($529.92), with interest thereon from said date.

Article VII.

That the reason your libellants have not sooner enforced their said claims against said steamtug "Resolute" was on account of the fact that said steamtug "Resolute" was in the possession of a receiver of the circuit court of the State of Oregon, duly appointed in a suit pending in said court for the county of Benton and State of Oregon, said court having general jurisdiction for the ap-
7 pointment of a receiver, and said steamtug being in the custody of said receiver so appointed by said court during all the time hereinbefore stated until on or about the — day of January, 1895, when said receiver was discharged and said steamtug "Resolute" released from the custody of said court and is now since that date subject to the jurisdiction and seizure by this court under the claims of the libellants herein, this court refusing to seize said tug during the time same was in the possession of said receiver as hereinbefore set forth and stated.

Article VIII.

That all and singular the premises are true and within the admiralty and — jurisdiction of the United States and of this honorable court.

Wherefore the libellants pray that process in due form of law, according to the course of this honorable court in cases of admiralty and maritime jurisdiction, may issue against the said steamtug "Resolute," her engines, boilers, machinery, tackle, apparel, and furniture, and that all persons claiming any right, title, or interest therein may be cited to appear and answer upon oath all the matters aforesaid, and that this honorable court will be pleased to decree the payment of the wages claimed herein, to wit, the sum of seventeen hundred seventy-three and $\frac{96}{100}$ dollars ($1,773.96) aforesaid, with costs, and that said steamtug may be condemned and sold to pay the same, and that the libellants may have such other and further relief in the premises as in law and justice they may be entitled to receive.

HENRY E. WILSON,
SIGNEY G. WOLFKILL,
THOMAS NELSON,
CHARLES JAHN, *Libellants.*

L. H. TARPLEY, *Proctor.*
THOMAS O'DAY, *Advocate.*

8 DISTRICT OF OREGON, }
State of Oregon, County of Multnomah. }

—, Henry E. Wilson, being first duly sworn, on oath say that I am one of the libellants in the above-entitled suit, and that I have read the foregoing libel and know the contents thereof, and that the facts stated therein are true, as I verily believe.

HENRY E. WILSON.

Subscribed and sworn to before me this 9th day of March, 1895.
[SEAL.] THOMAS O'DAY,
Notary Public for Oregon.

Endorsed: Filed March 20, 1895. R. B. Lamson, clerk.

9 And afterwards, to wit, on the 20th day of March, 1895, there was issued out of said court a warrant in words and figures as follows, to wit:

10 *Return in Case of Admiralty Seizure.*

UNITED STATES OF AMERICA, }
District of Oregon, } *ss.:*

In obedience to the command of the within writ I did, on the 22d day of March, 1895, at the port of Yaquina, in the district of Oregon, arrest the within-named vessel, the steamtug "Resolute," by going on board of her and seizing and arresting her and taking

said steamtug into my custody, together with her tackle, apparel, and furniture, and I served a duly certified copy of this writ at said time upon Joseph Morris, who is in charge of said steamtug *and in charge thereof.* I also posted a duly certified copy thereof in a public place in plain view on said steamtug. I served upon Joseph Morris, who is in charge of said steamtug, personally a duly certified copy of the complaint in the therein-entitled cause, at 2 miles E. of Toledo, Or., on the 22d day of March, 1895. I further caused to be published in the Daily Oregonian, in the said district of Oregon, for fifteen consecutive publications, exclusive of Sundays, the following notice and citation hereto affixed and made a part of this return:

United States Marshal's Notice.

Admiralty Seizure. THE TUG "RESOLUTE."

Citation.

UNITED STATES OF AMERICA, *District of Oregon,* } ss:

Whereas, a libel has been filed in the district court of the United States for the district of Oregon, on the 20th day of March, 1895, by Thomas O'Day, proctor, on behalf of Henry E. Wilson *et al.*, as libellants, in a cause of contract for seamen's wages, civil and maritime, against the tug "Resolute," her tackle, apparel and furniture, and praying the usual process and monition of the court, that all persons interested in said tug, "Resolute," her tackle, apparel, machinery and furniture may be cited to appear and answer the premises and all due proceedings being had, that the said tug, "Resolute," may be decreed to be sold, and the proceeds thereof distributed according to law.

Therefore, in pursuance of said monition under the seal of the said court, to me directed and delivered on the 20th day of March, 1895, I do hereby give notice, generally, unto all persons having, or pretending to have, any right, title or interest in the said tug called the "Resolute," her tackle, apparel, machinery and furniture, to appear before the said court, in the city of Portland, in said district, on the 6th day of May, 1895 next (if it be a court day, or else on next court day thereafter), at 10 o'clock forenoon of said day, then and there to answer the said libel, and to make known their allegations in that behalf.

Dated at Portland, in said district, this 21st day of March, A. D. 1895.

H. C. GRADY,
U. S. Marshal for the District of Oregon.

THOMAS O'DAY,
Proctor for Libellants.

Subsequently and on the 22d day of March, 1895, upon claim being filed by E. L. Bonner and A. B. Hammond, and the said claimant having given a good and sufficient bond in double the amount

claimed by the libellant-, to wit, in the sum of $3,600.00, which bond was duly approved by Charles B. Bellinger, U. S. district judge, conditioned to abide by and answer the decree of the court in said cause, I released said steamtug The Resolute to said claimant- upon said bond aforesaid, with her tackle, apparel, and furniture. The above-mentioned bond is herewith returned.

HENRY C. GRADY,
U. S. Marshal,
By J. D. COLEMAN, *Deputy.*

Dated at Portland, Oregon, this 10th day of April, 1895.

11 *Warrant of Arrest and Monition.*

UNITED STATES OF AMERICA, } ss:
District of Oregon, }

The President of the United States of America to the marshal of the district of Oregon or his deputy, Greeting:

You are hereby strictly enjoined and commanded that you arrest the vessel called the "Resolute," whereof W. J. Rickets now is or lately was master, her boats, tackle, apparel, and furniture, if she shall be found within your district, and the same so arrested you keep under safe and secure arrest until you shall receive further orders from the court or the same shall be discharged in due course of law, and that you site at the premises all persons in general who have or pretend to have any right, title, or interest therein to appear before the judge of the district court of the United States for the district of Oregon, at the city of Portland, on the 6th day of May, A. D. 1895, if it be a court day, or else on the court day next following, at ten o'clock in the forenoon of such day, then and there to answer unto Henry E. Wilson, Sidney G. Wolfkill, Thomas Nelson, and Charles Jahn in the cause of contract for seaman's wages, civil and maritime, and further to do and to receive in this behalf as to justice shall appertain, and that you duly certify the court aforesaid what you shall do in the premises, together with these presents.

Witness the Honorable Charles B. Bellinger, judge of said court, and the seal thereof, hereto affixed at Portland, in said district, on the 20th day of March, A. D. 1895.

[Seal United States District Court, Oregon.]

R. B. LAMSON, *Clerk,*
By —— ——, *Deputy Clerk.*

Endorsed: Returned and filed April 10, 1895. R. B. Lamson, clerk.

12 And afterwards, to wit, on the 22d day of March, 1895, there was duly filed in said court a claim of owner in words and figures as follows, to wit:

13 DISTRICT OF OREGON, *ss*:

To the Hon. Charles B. Bellinger, judge of the district court of the United States for said district:

I, W. T. Muir, of the city of Portland, in the district of Oregon, for and on behalf of E. L. Bonner and A. B. Hammond, owners of the vessel called the tug Resolute, her tackle, apparel, and furniture, intervening for interest in said vessel, her tackle, &c., appear before this honorable court and claim said vessel, her tackle, &c., and state that the said E. L. Bonner and A. B. Hammond — the true and *bona fide* owners thereof; and thereupon the said claimant prays that this honorable court will be pleased to decree to him a restitution of the said vessel, her tackle, &c., and otherwise right and justice to administer in the premises.

And the said Wm. T. Muir, being duly sworn, deposes and says that no other persons except the said E. L. Bonner and A. B. Hammond are owners of the said vessel, her tackle, &c., or of any part thereof, and that this affiant is the agent of said owners for the purpose of making claim to said vessel.

WM. T. MUIR.

Subscribed and sworn to before me this 22d day of March, 1895.

R. B. LAMSON, *Clerk*,
By G. H. MARSH,
Deputy Clerk.

Endorsed: Filed March 22, 1895. R. B. Lamson, clerk.

14 And afterwards, to wit, on the 10th day of April, 1895, there was duly filed in said court a claimant's stipulation to abide by and pay the decree in words and figures as follows, to wit:

15 In the District Court of the United States for the District of Oregon.

HENRY E. WILSON, SIDNEY G. WOLFKILL, THOMAS NELSON, and CHARLES JAHN, Libellants.
vs.
THE TUG RESOLUTE. } No. —.

Whereas a libel was filed in this court on March 20th, 1895, by Henry E. Wilson, Sidney G. Wolfkill, Thomas Nelson, and Charles Jahn against the steamtug Resolute, her tackle, apparel, and furniture, for the reasons and causes in said libel mentioned, and praying that the same may be condemned and sold to answer the prayer of said libellants, and a claim has been filed by E. L. Bonner and A. B. Hammond, and the said claimants and Henry Failing, their surety, the parties hereto, hereby consenting and agreeing that in case of default or contumacy on the part of the claimants or their surety execution may issue against their goods, chattels, and lands for the sum of three thousand six hundred $\frac{00}{100}$ dollars:

Now, therefore, it is hereby stipulated and agreed, for the benefit

of whom it may concern, that the stipulators undersigned shall be and are bound in the sum of three thousand six hundred $^{00}_{100}$ dollars, conditioned that the claimant above named shall abide by and pay the money awarded by the final decree rendered in the cause by this court, or, in case of appeal, by the appellate court.

E. L. BONNER &
A. B. HAMMOND,
By WM. T. MUIR,
Their Att'y, Claimants.
HENRY FAILING, *Surety.*

Approved:
CHARLES B. BELLINGER, *Judge.*

Taken and acknowledged before me this 22d day of March, 1895.
C. A. LEWIS,
[SEAL.] *Notary Public for Oregon.*

DISTRICT OF OREGON, *ss:*

I, Henry Failing, of Portland, Oregon, being duly sworn, depose and say that I reside in the district of Oregon, and that I am a householder in said district and am worth the sum of eight thousand and $^{00}_{100}$ dollars over and above all my just debts and liabilities.
HENRY FAILING.

Subscribed and sworn to before me this 22nd day of March, 1895.
[Seal Notary Public for Oregon.]
C. A. LEWIS,
Notary Public for Oregon.

Endorsed: Filed April 10, 1895. R. B. Lamson, clerk.

16 And afterwards, to wit, on the 4th day of May, 1895, there was duly filed in said court exceptions of claimants to libel in words and figures as follows, to wit:

17 In the District Court of the United States for the District of Oregon. In Admiralty. (*In Rem.*)

HENRY E. WILSON, SIDNEY G. WOLFKILL, THOMAS NELSON, and CHARLES JOHN, Libellants,
vs.
THE STEAMTUG RESOLUTE, Respondent; A. B. HAMMOND and E. L. BONNER, Claimants.

To the Honorable Charles B. Bellinger, judge of the above-entitled court:

The exceptions of A. B. Hammond and E. L. Bonner, claimants herein, to the libel of said libellants allege that the said libel is informal and insufficient as follows:

First. That the same shows that at the time the said libellants and each of them were employed the said steamtug Resolute was in

charge of and being operated by a receiver of the Oregon Pacific Railroad Company, a corporation, the owner of said steamtug, said receiver having been duly appointed by the circuit court of the State of Oregon for Benton county, and that all of the services performed by said libellants and each of them, mentioned in said libel, were performed while said steamtug was in the possession of and being operated by said receiver, and that no maritime or other lien arose by reason of such employment or the rendition of said services.

Second. That the said libel shows that this court has no jurisdiction in the premises.

Portland, Or., May 4th, 1895.

WHALLEY & MUIR,
Proctors for Claimants.

18 STATE OF OREGON, }
County of Multnomah, } ss:

Due service of the within exceptions is hereby accepted, in Multnomah county, Oregon, this 4th day of May, 1895, by receiving a copy thereof, duly certified to as such, by Wm. T. Muir, proctors for claimant-.

THOMAS O'DAY,
Attorney for Libellants.

Endorsed: Filed May 4, 1895. E. D. McKee, clerk.

19 And afterwards, to wit, on Monday, the 10th day of June, 1895, the same being the 84th judicial day of the regular March term of said court—present, the Honorable Charles B. Bellinger, United States district judge, presiding—the following proceedings were had in said case, to wit:

20 In the District Court of the United States for the District of Oregon.

THE STEAMER RESOLUTE—HENRY E. WILSON *et al.*, Libellants. No. 3937.

JUNE 10, 1895.

Now, at this day, on motion of Mr. Wm. T. Muir, of counsel for the claimants, it is ordered that this cause be, and the same is hereby, set for hearing on the exceptions to the libel on Wednesday, June 19, 1895.

21 And afterwards, to wit, on Saturday, the 13th day of July, 1895, the same being the 11th judicial day of the regular July term of said court—present, the Honorable Charles B. Bellinger, United States district judge, presiding—the following proceedings were had in said case, to wit:

22 In the District Court of the United States for the District of Oregon.

THE STEAMTUG RESOLUTE—HENRY E. WILSON *et al.*, Libellants. No. 3937.

JULY 13, 1895.

Now, at this day, on motion of Mr. Wm. T. Muir, of counsel for the claimants, it is ordered that this cause be, and the same is hereby, set for hearing on exceptions to the libel on Wednesday, July 24, 1895.

23 And afterwards, to wit, on Wednesday, the 24th day of July, 1895, the same being the 20th judicial day of the regular July term of said court—present, the Honorable Charles B. Bellinger, United States district judge, presiding—the following proceedings were had in said case, to wit:

24 In the District Court of the United States for the District of Oregon.

THE TUG RESOLUTE—HENRY E. WILSON *et al.*, Libellants. No. 3937.

JULY 24TH, 1895.

Now, at this day, comes the libellant-, by Mr. Thomas O'Day, of counsel, and the claimants, by Mr. W. T. Muir and Mr. J. R. Bryson, of counsel, and, on motion of said claimants, it is ordered that this cause be, and the same is hereby, set for hearing on the exceptions to the libel on Tuesday, August 6, 1895.

25 And afterwards, to wit, on Tuesday, the 6th day of August, 1895, the same being the 31st judicial day of the regular July term of said court—present, the Honorable Charles B. Bellinger, United States district judge, presiding—the following proceedings were had in said case, to wit:

26 In the District Court of the United States for the District of Oregon.

THE TUG RESOLUTE—HENRY E. WILSON *et al.*, Libellants. No. 3937.

AUGUST 6, 1895.

Now, at this day, come the libellants, by Mr. Thomas O'Day, of counsel, and the claimants, by Mr. W. T. Muir and Mr. J. R. Bryson, of counsel, and thereupon this cause comes on to be heard upon the exceptions to the libel herein, and the court, having heard the arguments of counsel, will advise thereof.

Whereupon it is ordered that said libellants be, and they are hereby, allowed to file an amended libel herein, and said claimants be, and they are hereby, allowed to file exceptions to said amended libel.

27 And afterwards, to wit, on Tuesday, the 24th day of September, 1895, the same being the 73d judicial day of the regular July term of said court—present, the Honorable Charles B. Bellinger, United States district judge, presiding—the following proceedings were had in said case, to wit:

28 In the District Court of the United States for the District of Oregon.

THE TUG RESOLUTE—HENRY E. WILSON *et al.*, Libellants. No. 3937.

SEPTEMBER 24, 1895.

This cause was heard upon the exceptions to the libel and was argued by Mr. Thomas O'Day, of counsel for the libellant-, and by Mr. W. T. Muir and Mr. J. R. Bryson, of counsel for the claimants. On consideration whereof it is ordered and adjudged that said exceptions be, and the same are hereby, overruled; and on motion of said claimants it is ordered that they be, and they are hereby, allowed ten days from this date in which to answer the libel herein.

29 And afterwards, to wit, on the 24th day of September, 1895, there was duly filed in said court an opinion on exceptions to libel in words and figures as follows, to wit:

30 In the District Court of the United States for the District of Oregon.

THE STEAMER WILLIAM M. HOAG—R. J. YOUNG *et al.*, Libellants; E. L. BONNER and A. B. HAMMOND, Claimants. No. 3940.

THE STEAMER THREE SISTERS—R. J. YOUNG *et al.*, Libellants; E. L. BONNER and A. B. HAMMOND, Claimants. No. 3941.

THE STEAMTUG RESOLUTE—GEORGE DOWSETT, Libellant; E. L. BONNER and A. B. HAMMOND, Claimants. No. 3732.

THE STEAMTUG RESOLUTE—HENRY E. WILSON *et al.*, Libellant-; E. L. BONNER and A. B. HAMMOND, Claimants. No. 3937.

SEPTEMBER 24, 1895.

BELLINGER, *J.*:

The most important question in these cases, and one that is common to them all, is the question whether a seaman can acquire a lien on a vessel by reason of services rendered while employed by a receiver who has charge of such vessel and is employing it in navigation under the orders of the court appointing him. It is argued against the lien that no lien can attach to property in the custody of the law, and therefore no lien can attach to prop-
31 erty in a receiver's hands; that to authorize a lien the employment must be made or authorized by and the service must be for the benefit, actual or constructive, of the owner; that the relation of the owner to the transaction must be of such a char-

acter that a right of action *in personam* can be maintained against him to recover the debt sought to be enforced as a lien against his property, and that it is against the policy of the law to allow admiralty to interfere with the operation of a vessel by a court having jurisdiction to operate it through a receiver.

The holding in The Esteban De Antunano, 31 Fed., 920, and in The Augustine Kobbe, 37 Fed., 702, is that when a vessel is in the custody of the law by an officer having her in possession under process the authority of her owners and of their agents, the master and ship's husband, to thereafter affect the ship by any conduct or *or* contract to result in a lien on the ship is ended.

In Parker *v.* The Little Acme, 43 Fed., 925, it is held that when a sheriff having possession of a vessel by virtue of a writ of execution ran the boat a few days without the knowledge or consent of the owner no lien would exist in favor of one who acted as master and pilot during the time, but such person must look to the sheriff for his compensation.

In The Young America, 30 Fed., 790, the general and well-understood rule was applied that when a vessel is arrested in admiralty the law requires that she be safely kept by the marshal, and that such officer has no authority to create or permit charges upon the property beyond such as are necessary for its due care and
32 preservation. These cases are relied upon by the claimants as embodying principles necessarily decisive of the cases on trial.

The rule of these cases is against a lien as a result of an unauthorized employment of a vessel by an officer having her in charge. The cases are those of legal custody for safe keeping or for sale under process. The employment of a vessel in such a case by the officer is not authorized; but when the custody is for the purpose of operating the property, of navigating a vessel by a court having jurisdiction, there is no reason to distinguish it from any other authorized employment. The receiver stands in the relation of owner. The expenses of his administration of property managed by him *is* always paid out of the assets in his hands and constitute a first charge upon it. The court appointing a receiver may incumber the property in its custody by the issue of receiver's certificates or may otherwise apply it in its operation. The owner's control is therefore not necessary in such a case to the creation of an obligation enforceable against his property. The objection urged in these cases has reference to the rights of the owner; but the owner's rights are subordinate to the authorized contracts and obligations of the receiver in any case, so that the enforcement of a claim for wages by a proceeding *in rem* does not prejudice the owner in any right which he otherwise has. Does the fact that the wages are earned in an employment by a receiver take the case out of the general rule which confers jurisdiction upon the admiralty courts for any reason?

It is urged that the court appointing the receiver is com-
33 petent to protect the mariner's rights, and that by taking jurisdiction a court of admiralty interferes in the adminis-

tration of the receivership. Maritime liens grow out of the necessities of commerce, and when they are for services they depend upon the character of the employment, and these are not affected by the fact of a receivership.

The character of the ownership or control of a vessel cannot in any case affect its liability nor lessen the necessity for that credit which the law of maritime liens supplies nor render less meritorious the services which that law compensates.

Whether the court appointing the receiver might have provided for the payment of these claims or had the power to do so is not material. It has not done so, and the property is no longer in its custody. The right is a subsisting one under the law, and this court cannot properly refuse to enforce it.

Objection is made to the claims of Young and Rääbe on the ground that the services rendered by them were as masters, and that for such services a lien does not exist. Such is the general rule in admiralty. The State statute, however, provides for a lien without exception as to masters of vessels. I cannot extend the admiralty exception to a case like this created by the State statute unless the case is within the reason that authorizes such exception.

The services in this case were upon a vessel plying between points in the river at which agents were stationed by the receiver,
34 who were clothed with authority to conduct the business of the vessel, thus leaving to the master merely the ordinary duties of navigation. The master was not a representative of the ship authorized to create liens, and is therefore not within the reason of the rule that denies him a lien, nor do I think that such lien is barred by the limitations of the State statute. That statute provides as follows: "All actions against a boat or vessel under the provisions of this title shall be commenced within one year after the cause of action shall have accrued."

This limitation applies to the procedure provided for by the State statute. It relates to the remedial provisions of the statute. It does not qualify the right of lien nor constitute a condition of the lien. The statute provides for actions to enforce the liens it creates, and it limits the time within which such actions shall be brought. All these provisions which undertake to confer upon the State courts this right to bring actions to enforce the lien thus created are void. Hine *v.* Taylor, 4 Wall., 555. And the limitation of such actions is therefore necessarily ineffectual and void.

It is contended that the assignee of the fireman's claim for wages for services on the Resolute cannot enforce the assigned claim; that the lien of a claim for mariner's wages is a personal privilege in the mariner and for the mariner's protection is not assignable. The authorities are not in harmony upon this point. The assignment of a shipwright's lien for repairs is upheld in Park *v.* Hull of the Baxter, 37 Fed., 219, and that of a mariner's lien for wages is upheld in The New Idea, 60 Fed., 294. I am of the opinion
35 that the lien of mariners for wages should stand upon the same footing with those of other laborers upon vessels and of materialmen.

The assignability of a thing enhances its value, and a non-assignable character given to a mariner's lien is more likely to injure than protect the owner. When the services are rendered and the right is perfected there is no more reason to deny the mariner's right to dispose of this property than there is of any other belonging to him. The law guards him against imposition without imposing disabilities upon him in the enjoyment of his property and rights. Unless the assignee is a speculator, or there is other reason to question or suspect the fairness of the transaction, the lien for wages in the hands of the assignee should be enforced.

The exceptions to the libels are overruled.

CHARLES B. BELLINGER, *Judge.*

Endorsed: Filed September 24, 1895. E. D. McKee, clerk.

36 And afterwards, to wit, on the 10th day of August, 1895, there was duly filed in said court an amended libel in words and figures as follows, to wit:

37 In the District Court of the United States for the District of Oregon. In Admiralty. (*In Rem.*)

To the Honorable Charles B. Bellin-er, judge of the district court of the United States for the district of Oregon:

By leave of court first had and obtained, Henry E. Wilson, Sidney G. Wolfkiil, Thomas Nelson, and Charles Jahn, of said district, mariners, late seamen on board the said steamtug "Resolute," whereof W. J. Rickets lately was master, against said steamtug "Resolute," her boilers, engine-, machinery, tackle, apparel, and furniture, also against all persons lawfully claiming said steamtug or lawfully intervening for their interest in said steamtug in a cause of wages, civil and maritime, alleges as follows:

Article I.

That your libellants are citizens and inhabitants of the district of Oregon.

Article II.

That the said steamtug "Resolute" was during the years 1892 and until about January 1st, 1894, and at all times hereinafter mentioned was engaged in the navigating of the waters of the Yaquina bay and Pacific ocean and waters tributary thereto within the district of Oregon and in the navigable waters within said district and of the waters tributary to the Pacific ocean in said district, and that said steamtug "Resolute" is now within said district of Oregon.

Article III.

That during all of said time said steamtug "Resolute" was owned by the Oregon Pacific Railroad Company, a corporation

duly organized under and by virtue of the laws of the State
38 of Oregon for the purpose of building, owning, and operating a railway and steamships within said State of Oregon and within the waters of said State of Oregon and the Pacific ocean and other waters tributary thereto.

Article IV.

That during all said time said steamtug "Resolute" was in the possession and under the control of receivers of said corporation duly appointed by the circuit court of the State of Oregon for the county of Benton in the suit of The Farmers' Loan & Trust Company, trustees, against The Oregon Pacific Railway Company and The Willamette Valley and Coast Railroad Company.

Article V.

That by the order of said court appointing the said receivers the said receivers were required, authorized, and directed to continue the operation of said railroad and steamship line as a going concern in the transportation and carrying of freight and passengers as a common carrier and the said lines of railroad in connection with a line of steamships sailing on and navigating the waters of Yaquina bay, the Pacific ocean, and the navigable waters tributary thereto, including the waters of the navigable rivers within the State of Oregon.

Article VI.

That said steamship lines of said defendant were operated in connection with said railroad, including said steamtug "Resolute," and that said steamtug "Resolute" was, while so operated by the said receivers and under the said orders of said court, operated by said receivers as a necessary, integral part of said steamship line.

39 Article VII.

That during the years from January, 1892, until about January 1st, 1894, at the port of Yaquina bay, in the said district of Oregon, libellants were hired by said Oregon Pacific Railroad Company, acting through and by its said receivers, so appointed as aforesaid, under a verbal contract as seamen and mariners upon said steamtug "Resolute."

Article VIII.

That said libellants served on said steamtug "Resolute" during said time under the instructions and charge of the master of said steamtug "Resolute" as follows: The libellant Henry E. Wilson, being engineer of said steamtug, at the agreed price of one hundred and fifty dollars ($150.00) per month; the libellant Thomas Nelson, being mate and assistant seaman on said steamtug, at the agreed price of seventy-five dollars ($75.00) per month: the libellant Charles Jahn, being a seaman in the capacity of sailor on said steamtug

"Resolute," at the agreed price of sixty-five dollars ($65.00) per month; the libellant Sidney G. Wolfkill, being a fireman on said steamtug, at the agreed price of sixty-five dollars ($65.00) per month.

Article IX.

That for the due performance of services on said steamtug libellants signed no shipping articles, but were employed under a verbal contract with the receivers and duly authorized agents of said railway company, as hereinbefore stated, and with the consent and under the direction of the master and owners of said steamtug; that in pursuance of said employment the libellants entered into the service of said steamtug as such seamen, as aforesaid, on or about January 1st, 1892, and continued therein until on or about
40 December 17th, 1893, when they were discharged without just cause by the receivers of the said steamtug, the said employment of said libellants being from month to month and said libellants being entitled under their said contract, as aforesaid, to payment of wages in pursuance thereof to and inclusive of the entire month of December, 1893.

Article X.

That during the whole time your libellants were in the service of said steamtug they well and truly performed their duties according to their best ability and in accordance with good seamanship and were obedient to all lawful demands of the said master, officers, and owners of said steamtug and ought to be paid for their said services the following sums due them and owing since January 1st, 1894: To libellant Henry E. Wilson five hundred and fifty-five dollars ($555.00), with interest thereon from said date; to libellant S. G. Wolfkill two hundred and forty and $\frac{50}{100}$ dollars ($240.50), with interest thereon from said date; to libellant Thomas Nelson four hundred forty-eight and $\frac{44}{100}$ dollars ($448.44), with interest thereon from said date; to libellant Charles Jahn the sum of five hundred twenty-nine and $\frac{92}{100}$ dollars ($529.92), with interest thereon from said date.

Article XI.

That the reason your libellants have not sooner enforced their said claim against said steamtug "Resolute" was on account of the fact that said steamtug "Resolute" was in the possession of said receivers of the circuit court of Benton county, State of Oregon, as aforesaid, duly appointed in a suit pending in said court, said court having general jurisdiction for the appointment of a receiver and said steamtug being in the custody of said receivers so ap-
41 pointed by said court and being operated under the express order of said court during all the times hereinbefore stated until on or about the — day of January, 1895, when said receiver was discharged and said steamtug "Resolute" released from the custody of said court and is now and since that date subject to seizure by this court under the claims of the libellants herein, this court

refusing to seize said tug at the request of said libellants prior to the time said receiver was discharged, as hereinbefore set forth and stated.

Article XII.

That on or about the — day of January, 1895, the property of said Oregon Pacific Railroad and Navigation Company, including said steamtug, was sold by order of said court of Benton county to the claimants herein, A. B. Hammond and E. L. Bonner, who now claim said steamtug as owners thereof, but libellants allege and charge the fact to be—

That said purchasers, A. B. Hammond and E. L. Bonner, had notice of the claims of your libellants for a lien against said steamtug "Resolute" for wages, as hereinbefore set forth, at and prior to the time of their purchase of said steamtug and purchased the same, knowing that said steamtug "Resolute" was liable to the claims of your libellants, as herein set forth and stated.

Article XIII.

That the said suit of The Farmers' Loan & Trust Company against said Oregon Pacific Railroad Company and The Willamette Valley & Coast Railway Company was brought for the purpose of foreclosing a mortgage or deed of trust which conveyed to the said Farmers' Loan & Trust Company the entire property of the said Oregon
42 Pacific Railroad Company for the purpose of securing an issue of bonds made by the said Oregon Pacific Railroad Company, and that the said receivers so appointed, as aforesaid, were appointed for the purpose of operating said road and steamship line of the said Oregon Pacific Railroad Company, including said steamtug "Resolute," pending the foreclosure of said mortgage or deed of trust and were so appointed at the instance and request of the said Farmers' Loan & Trust Company, trustee aforesaid, for the purpose of operating said road and said steamship line as a going concern and to prevent said property from depreciation in value by the inability of said Oregon Pacific Railroad Company to operate said road without the aid and assistance of receivers appointed in said suit.

Article XIV.

That the wages due said libellants and each of them have been demanded from time to time of the said Oregon Pacific Railroad Company and of said receivers and from the said Hammond and Bonner, and that all of said persons and each of them have refused to pay the wages due the libellants or pay any part thereof, and the said wages due the said libellants and each of them are a lien upon the said steamtug "Resolute" under general statute of the United States providing that the wages of seamen shall be a lien upon the vessel on which said seamen are employed.

Article XV.

That all and singular the premises are true and within the admiralty and — jurisdiction of the United States and of this honorable court.

Wherefore the libellants pray that process in due form of law according to the course of this honorable court in cases of
43 admiralty and maritime jurisdiction may issue against said steamtug "Resolute," her engines, boilers, machinery, tackle, apparel, and furniture, and that all persons claiming any right, title, or interest therein may be cited to appear and answer upon oath all the matters aforesaid, and that this honorable court will be pleased to decree the payment of the wages herein, to wit:

To libellant Henry E. Wilson, the sum of five hundred and fifty-five dollars ($555.00), with interest thereon from January 1st, 1894; to libellant S. G. Wolfkill, two hundred forty and $\frac{50}{100}$ dollars ($240.50), with interest thereon from January 1st, 1894; to libellant Thomas Nelson, four hundred forty-eight and $\frac{44}{100}$ dollars ($448.44), with interest thereon from Jan'y 1st, 1894, and to libellant Charles Jahn, the sum of five hundred twenty-nine and $\frac{92}{100}$ dollars ($529.92), with interest thereon from January 1st, 1894, making a total of seventeen hundred seventy-three and $\frac{96}{100}$ dollars ($1,773.96), and interest thereon from January 1st, 1894, with costs and disbursements, and that said steamtug "Resolute," her engines, boilers, tackle, apparel, and furniture, may be condemned and sold to pay the same, and that same may be declared a first lien upon said boat prior in time and right to all other claims or liens of whatsoever kind or nature, and that libellants may have such other and further relief in the premises as in law and justice they may be entitled to receive.

HENRY E. WILSON.
SIDNEY G. WOLFKILL.
THOMAS NELSON.
CHARLES JAHN.

O'DAY & TARPLEY, *Proctors.*
THOS. O'DAY, *Advocate.*

44 DISTRICT OF OREGON, }
State of Oregon, County of Multnomah. }

I, Henry E. Wilson, being first duly sworn, on oath say that I am one of the libellants in the above-entitled suit, and that I have read the foregoing libel and know the contents thereof, and that the facts stated therein are true as I verily believe.

HENRY E. WILSON.

Subscribed and sworn to before me this 10th day of August, 1895.

[SEAL.] THOMAS O'DAY,
Notary Public for Oregon.

STATE OF OREGON, }
County of ——, } ss:

Due service of the within amended libel is hereby accepted, in Multnomah county, Oregon, this 10 day of August, 1895, by receiving a copy thereof duly certified to as such by Thos. O'Day, proctor for libellants.

WM. T. MUIR,
Of Proctor for Claimants.

Endorsed: Filed August 10, 1895. E. D. McKee, clerk.

45 And afterwards, to wit, on Saturday, the 5th day of October, 1895, the same being the 83d judicial day of the regular July term of said court—present, the Honorable Charles B. Bellinger, United States district judge, presiding, the following proceedings were had in said case, to wit:

46 In the District Court of the United States for the District of Oregon. In Admiralty. (*In Rem.*)

In the Matter of the Libel of HENRY E. WILSON *et al.*
against
THE STEAMTUG RESOLUTE, HER BOILERS, ENGINES, FURNITURE, APPAREL, ETC.

Now, at this day, the above suit coming on to be heard before the court, and it appearing to the court that the claimants hereinafter named having failed to answer the amended libel of Henry E. Wilson, S. G. Wolfkill, Thomas Nelson, and Charles Jahn filed against the steamtug "Resolute," her boiler, engine, machinery, tackle, apparel, and furniture, as directed by the order of this court, and said steamtug and claimants hereinafter named being in default, said default, on motion of Thomas O'Day, proctor for said libellants, is hereby entered against said steamtug "Resolute," as aforesaid, and against said claimants, A. B. Hammond and E. L. Bonner.

And it further appearing to the court that A. B. Hammond and E. L. Bonner having heretofore appeared in this suit as claimants of said tug "Resolute," her apparel, machinery, engine, boiler, tackle, and furniture, as aforesaid, and having filed a stipulation in this court, conditioned to pay the claim of the libellants herein and each of them, with E. L. Bonner and A. B. Hammond, principals, and Henry Failing, as surety, in the sum of $3,600.00;

And it further appearing to this court that the said steamtug "Resolute," her boilers, engines, machinery, tackle, apparel,
47 and furniture, are indebted to the libellants herein, as set forth in their said libel, in the following sums, viz:

To the libellant Henry E. Wilson, for services performed on said steamtug "Resolute," in the sum of five hundred and fifty-five dollars ($555.00), with interest thereon from January 1st, 1894, to this date; to the libellant S. G. Wolfkill, in the sum of two hundred

forty and $\frac{50}{100}$ dollars ($240.50), with interest thereon from January 1st, 1894, to this date; to the libellant Thomas Nelson, in the sum of four hundred forty-eight and $\frac{44}{100}$ dollars ($448.44), with interest thereon from January 1st, 1894, to this date; to libellant Charles Jahn, in the sum of five hundred twenty-nine and $\frac{92}{100}$ dollars ($529.92), with interest therein from January 1st, 1894, to this date, which several sums, with interest, amounting at this time to the following:

Henry E. Wilson, six hundred thirty and $\frac{20}{100}$ dollars ($630.20); Sidney G. Wolfkill, two hundred seventy-four and $\frac{38}{100}$ dollars ($274.38); Thomas Nelson, five hundred one and $\frac{62}{100}$ dollars ($501.62), and Charles Jahn, six hundred four and $\frac{59}{100}$ dollars ($604.59);

And now, at this time, said Thomas O'Day, proctor for said libellants, moving for a judgment and decree against said steamtug "Resolute" as aforesaid—

It is therefore considered and adjudged by the court that said libellants have and recover from said steamtug "Resolute," her boiler, engine, machinery, tackle, apparel, and furniture, and also against said claimants, A. B. Hammond and E. L. Bonner, and also against said surety, Henry Failing, the following sums—that is to say:

Henry E. Wilson, the sum of six hundred thirty and $\frac{20}{100}$ dollars ($630.20); Sidney G. Wolfkill, the sum of two hundred sev-
48 enty-four and $\frac{38}{100}$ dollars ($274.38); Thomas Nelson, the sum of five hundred one and $\frac{62}{100}$ dollars ($501.62), and Charles Jahn, the sum of six hundred four and $\frac{59}{100}$ dollars ($604.59), all in gold coin of the United States, and that said libellants and each of them further recover from said defendants herein named and each of them their costs and disbursements herein, taxed and fixed by the court in the sum of $96.20, ninety-six $\frac{20}{100}$ dollars.

And it is further ordered, considered, and adjudged by the court that in case said sums and costs be not paid within thirty days from this date that execution issue therefor.

CHARLES B. BELLINGER, *Judge.*

Endorsed: Filed October 5, 1895. E. D. McKee, clerk.

49 And afterwards, to wit, on the 5th day of October, 1895, there was duly filed in said court a cost bill in words and figures as follows, to wit:

50 In the District Court of the United States for the District of Oregon.

HENRY E. WILSON *et al.*, Plaintiff-,
vs.
THE STEAMTUG RESOLUTE and A. B. HAMMOND *et al.*, Claimants, Defendant-. } No. —.

Statement of disbursements claimed by *the* Henry E. Wilson *et al.* in the above-entitled cause, viz:

Clerk's fees	$13 60
Marshal's fees	26 00
Costs in State circuit court	
Attorneys' fee, including exceptions to libel	25 00
Attorneys' fee for taking depositions, at $2.50 each	
Depositions	
Examiner's fees	
Referee's fees	
Witness fees	
Publishing citation	32 70
Keeper fees for Joe Morris, 1 day	2 50
Total taxed at	99 80

E. D. McKEE, *Clerk.*

DISTRICT OF OREGON, *ss:*

I, Thos. O'Day, being duly sworn, on my oath say that I am one of the attorneys for the libellants in the above-entitled cause; that the disbursements set forth herein have been actually and necessarily incurred in the prosecution of this suit, and that said libellants are entitled to recover the same from the defendants, as I verily believe.

THOS. O'DAY.

Subscribed and sworn to before me this 7th October, 1895.

E. D. McKEE, *Clerk,*
By —— ——,
Deputy Clerk.

Endorsed: Filed October 5, 1895. E. D. McKee, clerk.

51 And afterwards, to wit, on the 30th day of October, 1895, there was duly filed in said court a stipulation in words and figures as follows, to wit:

52 In the District Court of the United States for the District of Oregon. In Admiralty.

HENRY E. WILSON *et al.*, Libellants,
vs.
THE TUG RESOLUTE—E. L. BONNER and A. B. HAMMOND, Claimants.

It is hereby stipulated and agreed by and between the proctors for the libellants and claimants that said proceedings came on for hearing before the district court on the last amended libel, and that the amended exceptions were at said trial considered as applying to said last amended libel, and it is agreed that said amended exceptions may and do so apply.

Portland, Or., Oct. 25, '95.

O'DAY & TARPLEY,
Proctors for Libellants.
WM. T. MUIR,
Of Proctors for Claimants.

Endorsed: Filed October 30, 1895. E. D. McKee, clerk.

53 And afterwards, to wit, on the 4th day of November, 1895, there was duly filed in said court a petition for an appeal in words and figures as follows, to wit:

54 In the District Court of the United States for the District of Oregon. In Admiralty.

HENRY E. WILSON, SYDNEY G. WOLFKILL, THOMAS NELSON, and CHARLES JAHN, Libellants,
vs.
THE STEAMTUG RESOLUTE—E. L. BONNER and A. B. HAMMOND, Claimants.

The above-named claimants, E. L. Monner and A. B. Hammond, conceiving themselves aggrieved by the final judgment entered herein on October 5th, 1895, in the above-entitled proceedings, do hereby appeal from said final judgment to the Supreme Court of the United States, and they pray that this their appeal may be allowed, and that the question of the jurisdiction of the above-entitled court to render the said judgment be certified to the Supreme Court of the United States, and that a transcript of the record and proceedings and papers upon which said judgment was made, duly authenticated, may be sent to the Supreme Court of the United States.

Portland, Or., Nov. 1st, 1895.

J. W. WHALLEY &
WM. T. MUIR,
Of Proctors for Claimants.

UNITED STATES OF AMERICA, } ss:
District of Oregon, }

Service accepted.
Nov. 4, 1895.

O'DAY & TARPLEY.

Endorsed: Filed November 4, 1895. E. D. McKee, clerk.

55 And afterwards, to wit, on the 4th day of November, 1895, there was duly filed in said court an assignment of errors in words and figures as follows, to wit:

56 In the District Court of the United States for the District of Oregon. In Admiralty.

HENRY E. WILSON, SYDNEY G. WOLFKILL, THOMAS NELSON, and CHARLES JAHN, Libellants,
vs.
THE STEAMTUG RESOLUTE—A. B. HAMMOND and E. L. BONNER, Claimants and Appellants.

Now come the said E. L. Bonner and A. B. Hammond, and, having appealed from the final judgment and decree of the district court of the United States for the district of Oregon to the Supreme Court of the United States in the above-entitled cause of contract, civil and maritime, assign the following as the errors on which they intend to rely on said appeal:

First. The district court of the United States for the district of Oregon erred in overruling the exceptions and each of them to the amended libel.

Second. The district court of the United States for the district of Oregon erred in holding that the performance of the services mentioned in the amended libel gave rise to a maritime lien.

Third. The district court of the United States for the district of Oregon erred in holding that the libellants and each of them were entitled to and had a maritime lien on the said steamtug Resolute for the sums due on account of the services mentioned in the amended libel.

Fourth. The district court of the United States for the district of Oregon erred in adjudging and decreeing that the said steam-
57 tug Resolute be sold in said proceedings to satisfy the said claim of said libellants.

Fifth. The district court of the United States for the district of Oregon erred in holding that the said court had jurisdiction in the said proceedings.

Portland, Or., Nov. 1st, 1895.

J. W. WHALLEY &
WM. T. MUIR,
Of Proctors for Claimants.

UNITED STATES OF AMERICA, } ss:
District of Oregon, }

Service accepted.
Nov. 4, '95.

O'DAY & TARPLEY.

Endorsed: Filed November 4, 1895. E. D. McKee, clerk.

58 And afterwards, to wit, on the 4th day of November, 1895, there was duly filed in said court a bond on appeal in words and figures as follows, to wit:

59 In the District Court of the United States for the District of Oregon.

HENRY E. WILSON, SYDNEY G. WOLFKILL, THOMAS NELSON, and CHARLES JAHN, Libellants,
vs.
THE STEAMTUG RESOLUTE—A. B. HAMMOND and E. L. BONNER, Claimants and Appellants.

Know all men by these presents that we, A. B. Hammond and E. L. Bonner, the above-named claimants and appellants, and Henry Failing, of the city of Portland, Multnomah county, Oregon, are held and firmly bound unto the above-named Henry E. Wilson, Sydney G. Wolfkill, Thomas Nelson, and Charles Jahn in the sums following, to wit, the said Henry E. Wilson in the sum of six hundred thirty and $\frac{20}{100}$ dollars and interest, the said Sydney G. Wolfkill in the sum of two hundred seventy-four and $\frac{38}{100}$ dollars and interest, the said Thomas Nelson in the sum of five hundred one and $\frac{62}{100}$ dollars and interest, and the said Charles Jahn in the sum of six hundred four and $\frac{59}{100}$ dollars and interest, and costs and disbursements, the said sums to be paid to said parties respectively; for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated the — day of November, A. D. 1895.

Whereas the above-named A. B. Hammond and E. L.
60 Bonner have prosecuted an appeal to the Supreme Court of the United States to reverse the decree rendered in the above-entitled cause by the judge of the district court of the United States for the district of Oregon:

Now, therefore, the condition of this obligation is such that if the above-named A. B. Hammond and E. L. Bonner shall prosecute said appeal to effect and answer any judgment and all damages and costs if they fail to make said appeal good, then this obligation

shall be void; otherwise the same shall be and remain in full force and virtue.

A. B. HAMMOND, [SEAL.]
E. L. BONNER, [SEAL.]
By WM. T. MUIR, *Proctor.*
HENRY FAILING, *Surety.* [SEAL.]

Approved:
CHARLES B. BELLINGER, *Judge.*

Endorsed: Filed November 4, 1895. E. D. McKee, clerk.

61 And afterwards, to wit, on the 4th day of November, 1895, there was duly filed in said court an allowance of appeal and certificate of district judge in words and figures as follows, to wit:

62 In the District Court of the United States for the District of Oregon. In Admiralty.

HENRY E. WILSON, SYDNEY G. WOLFKILL, THOMAS NELSON, and CHARLES JAHN, Libellants,
vs.
THE STEAMTUG RESOLUTE—A. B. HAMMOND and E. L. BONNER, Claimants and Appellants.

Be it remembered that on this day in the above-entitled cause came Wm. T. Muir, of proctors for claimants, and filed herein his assignment of errors and petition for an allowance of an appeal herein to the Supreme Court of the United States from the decree herein rendered on the 5th day of October, A. D. 1895; which decree is as follows, to wit:

"Now, on this day, the above suit coming on to be heard before the court, and it appearing to the court that the claimants hereinafter named having failed to answer the amended libel of Henry E. Wilson, S. G. Wolfkill, Thomas Nelson, and Charles Jahn, filed against the steamtug 'Resolute,' her boilers, engine, machinery, tackle, apparel, and furniture, as directed by the order of this court, and said steamtug and claimants hereinafter named being in default, said default, on motion of Thomas O'Day, proctor for said libellants, is hereby entered against said steamtug 'Resolute,' as aforesaid, and against said claimants, A. B. Hammond and E. L. Bonner;

And it further appearing to the court that A. B. Hammond and E. L. Bonner having heretofore appeared in this suit as claimants of said tug 'Resolute,' her apparel, machinery, engine, boiler, tackle, and furniture, as aforesaid, and having filed a stip-
63 ulation in this court conditioned to pay the claim of the libellants herein and each of them, with E. L. Bonner and A. B. Hammond, principals, and Henry Failing, as surety, in the sum of $3,600.00;

And it further appearing to this court that the said steamtug 'Resolute,' her boilers, engine, machinery, tackle, apparel, and furni-

ture, are indebted to the libellants herein as set forth in their said libel in the following sums, viz:

To the libellant Henry E. Wilson for services performed on said steamtug 'Resolute' in the sum of five hundred and fifty-five dollars ($555.00), with interest thereon from January 1st, 1894, to this date; to the libellant S. G. Wolfkill in the sum of two hundred forty and $\frac{50}{100}$ dollars ($240.50), with interest thereon from January 1st, 1894, to this date; to the libellant Thomas Nelson in the sum of four hundred forty-eight and $\frac{44}{100}$ dollars ($448.44), with interest thereon from January 1st, 1894, to this date; to libellant Charles Jahn in the sum of five hundred twenty-nine and $\frac{92}{100}$ dollars ($529.92), with interest thereon from January 1st, 1894, to this date; which several sums with interest amounting at this time to the following:

Henry E. Wilson, six hundred thirty and $\frac{20}{100}$ dollars ($630.20); Sydney G. Wolfkill, two hundred seventy-four and $\frac{38}{100}$ dollars ($274.38); Thomas Nelson, five hundred one and $\frac{62}{100}$ dollars ($501.62), and Charles Jahn, six hundred four and $\frac{59}{100}$ dollars ($604.59);

And now, at this time, said Thomas O'Day, proctor for said libellants, moving for a judgment and decree against said steamtug 'Resolute,' as aforesaid--

64 It is therefore considered and adjudged by the court that said libellants have and recover from said steamtug 'Resolute,' her boiler, engine, machinery, tackle, apparel, and furniture, and also against said claimants, A. B. Hammond and E. L. Bonner, and also against said surety, Henry Failing, the following sums—that is to say:

Henry E. Wilson, the sum of six hundred thirty and $\frac{20}{100}$ dollars ($630.20); Sydney G. Wolfkill, the sum of two hundred seventy-four and $\frac{38}{100}$ dollars (274.38); Thomas Nelson, the sum of five hundred one and $\frac{62}{100}$ dollars ($501.62), and Charles Jahn, the sum of six hundred four and $\frac{59}{100}$ dollars ($604.59), all in gold coin of the United States, and that said libellants and each of them further recover from said defendants herein named and each of them their costs and disbursements herein taxed and fixed by the court in the sum of $96.20, ninety-six and $\frac{20}{100}$ dollars.

And it is further ordered, considered, and adjudged by the court that in case said sums and costs be not paid within thirty days from this date that execution issue therefor.

CHARLES B. BELLINGER, *Judge.*"

And in open court the said claimants, by their said proctor, prayed that said appeal be allowed, and tendered a bond, with sufficient surety, to the approval of the court, and which bond is hereby approved, to stay proceedings herein until said appeal shall have been determined; and thereupon the court hereby allows said appeal and approves said bond, and execution is hereby stayed until the determination of said appeal, and this court does hereby certify and make known unto the Supreme Court of the United States that the only question arising upon the said appeal is the question as to whether

or not, under the facts stated in the amended libel and the exceptions thereto, this court acquired or had jurisdiction to hear or
65 pronounce the said decree.

And that the following is a copy of the said amended libel and the exceptions filed thereto:

Amended Libel.

By leave of the court first had and obtained, Henry E. Wilson, Sydney G. Wolfkill, Thomas Nelson, and Charles Jahn, of said district, mariners, late seamen on board the said steamtug Resolute, whereof W. J. Rickets lately was master, against said steamtug "Resolute," her boiler, engine, machinery, tackle, apparel, and furniture; also against all persons lawfully claiming said steamtug or lawfully intervening for their interest in said steamtug in a cause of wages, civil and maritime, alleges as follows:

Article I.

That your libellants are citizens and inhabitants of the district of Oregon.

Article II.

That the said steamtug "Resolute" was during the years 1892 and until about January 1st, 1894, and at all times hereinafter mentioned was engaged in the navigating of the waters of the Yaquina bay and Pacific ocean and waters tributary thereto within the district of Oregon and in the navigable waters within said district and of the waters tributary to the Pacific ocean in said district, and that said steamtug "Resolute" is now within said district of Oregon.

Article III.

That during all of said time said steamtug "Resolute" was owned by the Oregon Pacific Railroad Company, a corporation duly organized under and by virtue of the laws of the State of Oregon
66 for the purpose of building, owning, and operating a railway and steamships within the said State of Oregon and within the waters of said State of Oregon and the Pacific ocean and other waters tributary thereto.

Article IV.

That during all of said time said steamtug "Resolute" was in the possession and under the control of receivers of said corporation, duly appointed by the circuit court of the State of Oregon for the county of Benton in the suit of The Farmers' Loan and Trust Company, trustees, against The Oregon Pacific Railway Company and The Willamette Valley and Coast Railroad Company.

Article V.

That by the order of said court appointing the said receivers the said receivers were required, authorized, and directed to continue

the operation of said railroad and steamship line as a going concern in the transportation and carrying of freight and passengers as a common carrier and the said lines of railroad in connection with a line of steamships sailing on and navigating the waters of Yaquina bay, the Pacific ocean, and the navigable waters tributary thereto, including the waters of the navigable rivers within the State of Oregon.

Article VI.

That said steamship lines of said defendant- were operated in connection with said railroad, including said steamtug "Resolute," and that said steamtug "Resolute" was, while so operated by the said receivers and under the said orders of said court, operated by said receivers as a necessary integral part of said steamship line.

Article VII.

67 That during the years from January, 1892, until about January 1st, 1894, at the port of Yaquina bay, in the said district of Oregon, libellants were hired by said Oregon Pacific Railroad Company, acting through and by its said receivers so appointed as aforesaid, under a verbal contract as seamen and mariners upon said steamtug "Resolute."

Article VIII.

That said libellants served on said steamtug "Resolute" during said time under the instructions and charge of the master of said steamtug "Resolute" as follows: The libellant Henry E. Wilson, being engineer of said steamtug, at the agreed price of one hundred and fifty dollars ($150.00) per month; the libellant Thomas Nelson, being mate and assistant seaman on said steamtug, at the agreed price of seventy-five dollars ($75.00) per month; the libellant Charles Jahn, being a seaman in the capacity of sailor on said steamtug "Resolute," at the agreed price of sixty-five dollars ($65.00) per month; the libellant Sydney G. Wolfkill, being a fireman on said steamtug, at the agreed price of sixty-five dollars ($65.00) per month.

Article IX.

That for the due performance of services on said steamtug libellants signed no shipping articles, but were employed under a verbal contract with the receivers or duly authorized agents of said railway company, as hereinbefore stated, and with the consent and under the direction of the master and owners of said steamtug; that in pursuance of said employment the libellants entered into the service of said steamtug as such seamen as aforesaid on or about January 1st, 1892, and continued therein until on or about December 17th, 1893, when they were discharged without just cause
68 by the receivers of the said steamtug, the said employment of the said libellants being from month to month, and said libellants being entitled under their said contract as aforesaid to payment of wages in pursuance thereof to and inclusive of the entire month of December, 1893.

Article X.

That during the whole time your libellants were in the service of said steamtug they well and truly performed their duties according to their best ability and in accordance with good seamanship, and were obedient to all lawful demands of the said master, officers, and owners of said steamtug, and desire and ought to be paid for their said services the following sums due them and owing since January 1st, 1894: To libellant Henry E. Wilson, five hundred and fifty-five dollars ($555.00), with interest thereon from said date; to libellant S. G. Wolfkill, two hundred and forty and $\frac{50}{100}$ dollars ($240.50), with interest thereon from said date; to libellant Thomas Nelson, four hundred forty-eight and $\frac{44}{100}$ dollars ($448.44), with interest thereon from said date; to libellant Charles Jahn, the sum of five hundred twenty-nine and $\frac{92}{100}$ dollars ($529.92), with interest thereon from said date.

Article XI.

That the reason your libellants have not sooner enforced their said claims against said steamtug "Resolute" was on account of the fact that said steamtug "Resolute" was in the possession of said receivers of the circuit court of Benton county, State of Oregon, as aforesaid, duly appointed in a suit pending in said court, said court having general jurisdiction for the appointment of a receiver and said steamtug being in the custody of said receiver so ap-
69 pointed by said court and being operated under the express order of said court during all the times hereinbefore stated, on or about the — day of January, 1895, when said receiver was discharged and said steamtug "Resolute" released from the custody of said court and is now and since that date subject to seizure by this court under the claims of the libellants herein, this court refusing to seize said tug at the request of said libellants prior to the time said receiver was discharged as hereinbefore set forth and stated.

Article XII.

That on or about the — day of January, 1895, the property of said Oregon Pacific Railroad and Navigation Company, including said steamtug, was sold by order of said court of Benton county to the claimants herein, A. B. Hammond and E. L. Bonner, who now claim said steamtug as owners thereof, but libellants allege and charge the facts to be—

That said purchasers, A. B. Hammond and E. L. Bonner, had notice of the claims of your libellants for a lien against said steamtug "Resolute" for wages, as hereinbefore set forth, at and prior to the time of their purchase of said steamtug and purchased the same knowing that said steamtug Resolute was liable to the claims of your libellants as herein set forth and states.

Article XIII.

That the said suit of the Farmers' Loan and Trust Company against said Oregon Pacific Railroad Company and the Willamette

Valley and Coast Railway Company was brought for the purpose of foreclosing on a mortgage or deed of trust which conveyed to the said Farmers' Loan & Trust Company the entire property of the said Oregon Pacific Railroad Company for the purpose of
70 securing an issue of bonds made by the said Oregon Pacific Railroad Company, and that the said receivers so appointed as aforesaid were appointed for the purpose of operating said road and steamship line of the said Oregon Pacific Railroad Company, including said steamtug "Resolute," pending the foreclosure of said mortgage or deed of trust and were so appointed at the instance and request of the said Farmers' Loan and Trust Company, trustee, aforesaid, for the purpose of operating said road and said steamship line as a going concern and to prevent said property from depreciation in value by the inability of said Oregon Pacific Railroad Company to operate said road without the aid and assistance of receivers appointed in said suit.

Article XIV.

That the wages due said libellants and each of them have been demanded from time to time of the said Oregon Pacific Railroad Company and of said receivers and from the said Hammond and Bonner, and that all of said persons and each of them have refused to pay the wages due the libellants or pay any part thereof, and the said wages due the said libellants and each of them are a lien upon the said steamtug "Resolate" under general statute of the United States providing that the wages of seamen shall be a lien upon the vessel on which said seamen were employed.

Article XV.

That all and singular the premises are true and within the admiralty and — jurisdiction of the United States and of this honorable court.

Wherefore the libellants pray that process in due form of law, according to the course of this honorable court in cases of ad-
71 miralty and maritime jurisdiction, may issue against said steamtug "Resolute," her engine, boilers, machinery, tackle, apparel, and furniture, and that all persons claiming any right, title, or interest therein may be cited to appear and answer upon oath all the matters aforesaid, and that this honorable court will be pleased to decree the payment of the wages herein, to wit:

To libellant Henry E. Wilson, the sum of five hundred and fifty-five dollars ($555.00), with interest thereon from January 1st, 1894; to libellant S. G. Wolfkill, two hundred forty and $\frac{50}{100}$ dollars ($240.50), with interest thereon from January 1st, 1894; to libellant Thomas Nelson, four hundred forty-eight and $\frac{44}{100}$ dollars ($448.44), with interest thereon from January 1st, 1894, and to libellant Charles Jahn, the sum of five hundred twenty-nine and $\frac{92}{100}$ dollars ($529.92), with interest thereon from January 1st, 1894, making a total of seventeen hundred seventy-three and $\frac{96}{100}$ dollars ($1,773.96) and interest thereon from January 1st, 1894, with costs and disbursements,

and that said steamtug "Resolute," her engines, boilers, tackle, apparel, and furniture, may be condemned and sold to pay the same, and that same may be declared a first lien upon said boat prior in time and right to all other claims or liens of whatsoever kind or nature, and that libellants may have such other and further relief in the premises as in law and justice they may be entitled to receive.

Exceptions.

The exceptions of A. B. Hammond and E. L. Bonner, claimants herein, to the libel of said libellants allege that the said libel is informal and insufficient, as follows:

First. That the same shows that at the time the said libel-
72 lants and each of them were employed the said steamtug Resolute was in charge of and being operated by a receiver of the Oregon Pacific Railroad Company, a corporation, the owner of said steamtug, said receiver having been duly appointed by the circuit court of the State of Oregon for Benton county, and that all of the services performed by said libellants and each of them mentioned in said libel were performed while said steamtug was in the possession of and being operated by said receiver, and that no maritime or other lien arose by reason of such employment or the rendition of said services.

Second. That the said libel shows that this court has no jurisdiction in the premises.

November 4th, 1895.

CHARLES B. BELLINGER, *Judge.*

Endorsed: Filed November 4, 1895. E. D. McKee, clerk.

73 And afterwards, to wit, on Monday, the 20th day of January, 1896, the same being the 64th judicial day of the regular November term of said court—present, the Honorable Charles B. Bellinger, United States district judge, presiding—the following proceedings were had in said case, to wit:

74 In the District Court of the United States for the District of Oregon.

THE TUG RESOLUTE—HENRY E. WILSON *et al.*, Libellants,
E. L. BONNER and A. B. HAMMOND, Claimants. } No. 3937.

JANUARY 20, 1896.

Now, at this day, on motion of Mr. William T. Muir, of counsel for the claimants, it is ordered that the time for filing the transcript of record in this cause on appeal to the United States Supreme Court be, and the same is hereby, extended thirty days.

CHARLES B. BELLINGER, *Judge.*

75 DISTRICT OF OREGON, *ss:*

I, E. D. McKee, clerk of the United States district court for the district of Oregon, do hereby certify that the foregoing transcript of record and proceedings in cause No. 3937, Henry E. Wilson *et al. vs.* The Steamtug Resolute, is a full, true, and correct transcript of the original record and proceedings in said cause as the same appear at my office and in my custody.

Seal United States District Court, Oregon.

In testimony whereof I have hereunto set my hand and affixed the seal of said district court, at Portland, in said district, this January 31, 1896.

E. D. McKEE,
Clerk United States District Court for the District of Oregon,
By G. H. MARSH,
Deputy Clerk.

Endorsed on cover: Case No. 16,200. Oregon D. C. U. S. Term No., 136. The Steamtug "Resolute," A. B. Hammond & E. L. Bonner, claimants, appellants, *vs.* Henry E. Wilson, Sydney G. Wolfkill, Thomas Nelson, and Charles Jahn. Filed February 21, 1896.

Nos. 135, 136 & 138.
OCT 16 1897
JAMES H. McKENNEY

Brief of Whalley & Muir for Appellants

Supreme Court of the United States

Filed Oct. 16, 1897.

OCTOBER TERM, 1897.

THE STEAM TUG "RESOLUTE," A. B. HAMMOND, and E. L. BONNER,
Claimants and Appellants.
vs.
HENRY E. WILSON, SIDNEY G. WOLFKILL, THOMAS NELSON & CHARLES JAHN,
Libellants and Respondents.
No. 16,200

THE STEAM TUG "RESOLUTE," A. B. HAMMOND and E. L. BONNER,
Claimants and Appellants.
vs.
GEORGE DOWSETT,
Libellant and Respondent.
No. 16,199

THE STEAMER "THREE SISTERS," THE OREGON CENTRAL AND EASTERN RAILROAD COMPANY,
Claimants and Appellants.
vs.
R. J. YOUNG, M. BELL, C. A. BELL, H. ROBERTSON, W. HOWELL, W. H. SUTTON, *et al.*,
Libellants and Respondents.
No. 16,202

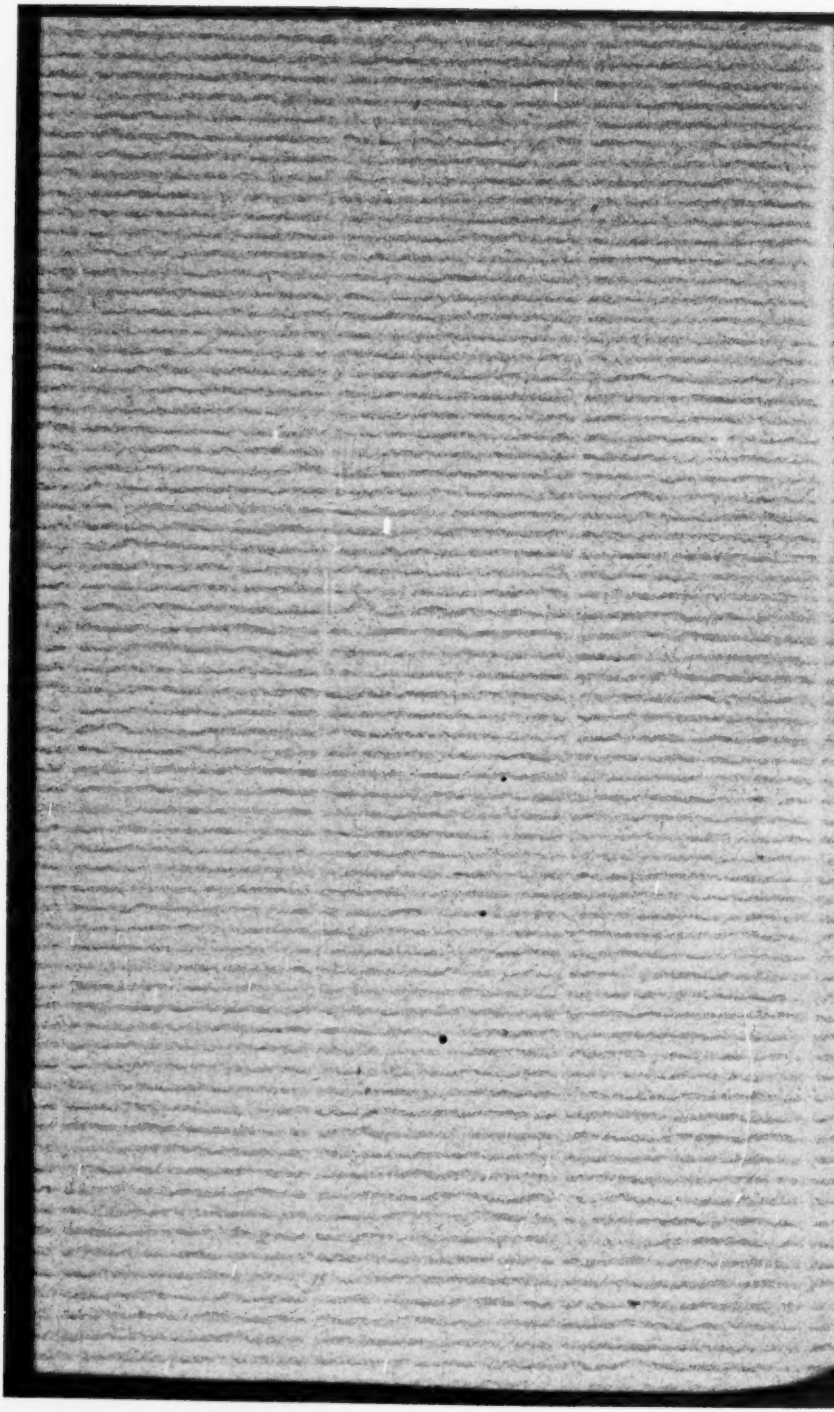
Appeal from the District Court of the United States for the District of Oregon.

BRIEF FOR APPELLANTS.

JOHN W. WHALLEY and
WILLIAM T. MUIR,
Proctors for Claimants.

WILLIAM T. MUIR,
Of Proctor for Claimants.

The Lewis & Dryden Printing Co.
1897.



IN THE

SUPREME COURT

OF THE

UNITED STATES

OCTOBER TERM, 1897.

THE STEAM TUG "RESOLUTE," A. B. HAMMOND, and E. L. BONNER,
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No. 16,202

Appeal from the District Court of the United States, for the District of Oregon.

BRIEF FOR APPELLANTS.

STATEMENT OF THE CASE.

The principal questions to be decided being common to all of these cases, a stipulation has been entered into between the parties consenting to a consolidation.

The Oregon Pacific Railroad Company was an Oregon corporation engaged in operating a railroad in said state, and incidental thereto, a steamship line between its seaboard terminus, Yaquina Bay, Oregon, and San Francisco, California, and a line of steamboats on the Willamette river. The steam tug Resolute was employed on Yaquina Bay, in local aid of the ocean navigation of the company, and the steamboat Three Sisters was engaged in river service on the Willamette. Early in its history the Oregon Pacific Railroad Company executed a mortgage upon all of its property, including the libeled vessels, to the Farmers Loan & Trust Company, of New York, trustee, to secure the payment of a large sum of borrowed money. Default was made in the payment of the principal and interest of this mortgage indebtedness. The trustee brought suit in the Circuit Court of the State of Oregon for Benton county, to foreclose the mortgage, and for the appointment of a receiver *pendente lite*. A receiver was appointed in the proceedings thus instituted, and, pending the final determination thereof, he was authorized to continue the operation of the railway, steamship and steamboat lines. The libellants, Henry E. Wilson, Sydney G. Wolfkill, Thomas Nelson and Charles Jahn, were employed, by the said receiver, as seamen on the tug Resolute. They commenced said service on or about Janu-

ary 1, 1892, and continued therein until about December 17, 1893, at which time they were dismissed. In the meantime their wages were not fully paid. At the time of their discharge, the several amounts mentioned in the amended libel were due them from the receiver. Geo. Dowsett, the libellant of the Resolute, in one of the cases, claims for services personally rendered, and also under an assignment from one Tellef Telleffsen. Both Dowsett and his assignor, Telleffsen, were employed by the receiver.

The libellants of the Three Sisters were employed in various capacities, on the boat named. Their employment began and ended during the administration of the receivership. Libellants R. J. Young and Geo. Raabe each acted as captain of the Three Sisters; Raabe acted a part of the time as captain and watchman at a uniform salary. It is shown that this boat was engaged in river traffic within the State of Oregon, and that the duties of the master were confined to the navigation of the vessel. The boat carried a purser, whose business it was to receive and pay out all moneys, and it plied only between points where there were regularly employed agents of the receiver. The libel against the last-named vessel was not filed until after the expiration of one year from the time the amounts claimed became due. *The amended libels all show that on or about December 22, 1894, all of the property of the Oregon Pacific Railroad Company, including the vessels named, was sold in the original foreclosure proceedings, under the final decree of the circuit court*

in which the suit was pending. The claimants became the purchasers.

Record Three Sisters, pp. 33, 34.

Record Dowsett, p. 36.

Record Wilson, p. 29.

The amended libel against the Three Sisters contains the following averment: "That until or about December 22, 1894, the said steamer Three Sisters remained in the control and possession of the receivers so appointed as aforesaid by the said Circuit Court of the State of Oregon for the County of Benton. That the said suit of the Farmers Loan & Trust Company against the Oregon Pacific Railroad Company and the Willamette Valley & Coast Railroad Company was brought for the purpose of foreclosing a mortgage or deed of trust conveyed to the said Farmers Loan & Trust Company of the entire property of the said Oregon Pacific Railroad Company for the purpose of securing an issue of bonds made by the said Oregon Pacific Railroad Company; and that the said receivers so appointed as aforesaid were appointed for the purpose of operating said railroad and steamboat lines of the said Oregon Pacific Railroad Company, including the said steamer Three Sisters pending the foreclosure of the said mortgage or deed of trust, and were so appointed at the instance of the said Farmers Loan & Trust Company, trustee as aforesaid. That on or about the said December 22, 1894, all of the property of the said Oregon Pacific Railroad Company, including the

said steamer Three Sisters, was sold under execution issued out of the said Circuit Court of the State of Oregon for the County of Benton in the said suit of the Farmers Loan & Trust Company, trustee, vs. The Oregon Pacific Railroad Company, and the Willamette Valley & Coast Railroad Company, and that all of the said property of the said Oregon Pacific Railroad Company, including the said steamer Three Sisters, was purchased at the said sale by one A. B. Hammond and E. L. Bonner, and that since said date the said steamer Three Sisters has been in the possession of the said Bonner and of the said Hammond, and is now in their possession as purchasers under the said sale as aforesaid."

Record Three Sisters, pp. 33, 34.

This sale was confirmed, and subsequently approved by the Supreme Court. (*Farmers Loan Company v. Oregon Pacific Railroad Company, 28 Or. 44.*) *The receiver was thereupon discharged.* At the time of sale notice was given of libellants' claims.

The claimants filed exceptions to the amended libel against the Resolute upon the following grounds:

"1st. That the same shows that at the time the said libellants and each of them, were employed, the said steam tug Resolute was in charge of and being operated by a receiver of the Oregon Pacific Railroad Company, a corporation, the owner of said steam tug, said receiver having been duly appointed by the Circuit

Court of the State of Oregon for Benton county, and that all of the services performed by said libellants and each of them, mentioned in said amended libel, were performed while said steam tug was in the possession of and being operated by said receiver, and that no maritime or other lien arose by reason of such employment, or the rendition of said services.

"2d. That the said libel shows that this court has no jurisdiction in the premises."

Record Wilson v. Resolute, p. 31.

Record Dowsett v. Resolute, p. 37.

The same exceptions were filed to the amended libel in the case against the Three Sisters. Exceptions were also filed to the last-mentioned amended libel on the additional ground that Young and Raabe were masters of the vessel, and that no lien arose in their favor; and on the further ground that Young and Raabe did not file their libels until after the expiration of one year from the rendition of the services.

Record Three Sisters, p. 35.

The court below overruled all of the exceptions, and, upon failure of the claimants to further plead, rendered judgment in favor of the libellants for the amounts claimed. (69 Fed. 742.)

Upon the entry of judgment the claimants perfected an appeal to this court. The appeal in each of the cases is similar in form. The following is a copy of the one

filed in Wilson et al. v. The Resolute: "The above-named claimants . . . conceiving themselves aggrieved by the final judgment entered herein on October 5, 1895, in the above-entitled proceedings, do hereby appeal from said final judgment to the Supreme Court of the United States, and they pray that this their appeal may be allowed, and that the question of the jurisdiction of the above-entitled court to render the said judgment be certified to the Supreme Court of the United States, and that a transcript of the record, and proceedings, and papers, upon which said judgment was made, duly authenticated, may be sent to the Supreme Court of the United States."

Record Wilson, p. 22.

Record Dowsett, p. 27.

Record Three Sisters, p. 24.

The allowance of the appeal in the Wilson case, the others being similar, is as follows:

"Be it remembered that on this day in the above-entitled cause came Wm. T. Muir, of proctors for claimants, and filed herein his assignment of errors, and petition for an allowance of an appeal herein to the Supreme Court of the United States, from the decree herein, rendered on the 5th day of October, A. D. 1895, which decree is as follows, to wit: (Here follows a copy of the decree.) And in open court the said claimants, by their said proctor, prayed that said appeal be allowed, and tendered a bond with sufficient surety, to the approval of the court, and which bond is hereby ap-

proved, to stay proceedings herein until said appeal shall have been determined, and thereupon the court hereby allows said appeal, and approves said bond, and execution is hereby stayed until the determination of said appeal. And this court does hereby certify and make known unto the Supreme Court of the United States that the only question arising upon the said appeal is the question as to whether or not, under the facts stated in the amended libel, and the exceptions thereto, this court acquired or had jurisdiction to hear or pronounce the said decree.

"And that the following is a copy of the said amended libel and the exceptions thereto."

(Here follows a copy of the amended libel and of the exceptions.)

Record Wilson, pp. 25-31.

Record Dowsett, pp. 30-37.

Record Three Sisters, pp. 27-35.

In the case last mentioned the following assignment of errors was filed:

"Now come the said E. L. Bonner and A. B. Hammond, and having appealed from the final judgment and decree of the District Court of the United States for the District of Oregon, to the Supreme Court of the United States in the above-entitled cause of contract, civil and maritime, assign the following as the errors on which they intend to rely on said appeal:

"First. The District Court of the United States for the District of Oregon erred in overruling the exceptions and each of them to the amended libel.

"Second. The District Court of the United States for the District of Oregon erred in holding that the performance of the services, or any of them, mentioned in the amended libel, gave rise to a maritime lien.

"Third. The District Court of the United States for the District of Oregon erred in holding that the libellants, and each of them, were entitled to and had a maritime lien on the said steam tug Resolute, for the sums due on account of the services mentioned in the amended libel.

"Fourth. The District Court of the United States for the District of Oregon erred in adjudging and decreeing that the said steam tug Resolute be sold in said proceedings to satisfy the said claims of said libellants.

"Fifth. The District Court of the United States for the District of Oregon erred in holding that the said court had jurisdiction in the said proceedings as to the claims of any of the said libellants."

Record Wilson, p. 23.

Record Dowsett, p. 28.

Record Three Sisters, p. 25.

In the case against the Three Sisters there is another assignment of error in addition to those quoted above, filed in the Wilson case. It is as follows:

"Sixth. The said District Court of the United States for the District of Oregon erred in holding that libellants R. J. Young and Geo. Raabe had acquired a lien upon the said steamer . . . on account of the services rendered by them respectively as master, and erred in holding that the rights of said R. J. Young and Geo. Raabe, as master, had not been barred by the statute of limitations."

Record Three Sisters, p. 25.

All of the libellants except R. J. Young and Geo. Raabe claim to be entitled to a lien under the general rules of admiralty. Young and Raabe, having each served in the capacity of master, rely upon the state law. The statute reads as follows:

"Sec. 3690. Every boat or vessel used in navigating the waters of this state or constructed in this state shall be liable and subject to a lien—

"1. For wages due to persons employed for work done or services rendered on board of such boat or vessel."

2 Hill's Code (1887), p. 1599.

"Sec. 3706. All actions against a boat or vessel under the provisions of this title shall be commenced

within one year after the cause of action shall have accrued."

2 Hill's Code (1887), p. 1602.

The cases were appealed on jurisdictional questions only. There are four of these. We claim—

. First. That the incidents of a receiver's contract attached to the contracts of employment, and no admiralty liens arose therefrom.

Second. *Regardless of the decision of this point, we contend that the matters have been thoroughly and finally determined by the decree of the court of equity, and cannot be re-examined in any court.*

Third. That the amended libels show that the statute of limitations has barred those claims which are based on the Oregon statutes.

Fourth. That the claim assigned was, by reason of the assignment, divested of an admiralty lien, and, in consequence, a court of admiralty has no jurisdiction to enforce its payment by a proceeding *in rem*.

ARGUMENT.

I.

These appeals were taken to this court from the final judgment of the United States District Court for the District of Oregon, under section 5 of the act of Congress of 1891. This section reads as follows, to wit:

"That appeals or writs of error may be taken from the district court, or from the existing circuit courts to the Supreme Court in the following cases:

"In any case in which the jurisdiction of the court is in issue; in such cases the question of jurisdiction alone shall be certified to the Supreme Court from the court below for decision" . . .

Supplement to Rev. Stats. 1874-1891, p. 903.

The proceedings were instituted by the former employes of a receiver, appointed by a court of equity in a foreclosure suit, to recover the amounts earned by them while in the receiver's employ. The employment of the men in the several occupations alleged; the rendition of services by them; the amounts remaining unpaid, and all other well-pleaded allegations of the amended libels, are admitted. The only questions argued in the lower court, and the only ones raised on these appeals, are jurisdictional. The proceedings are *in rem*. Admiralty has no jurisdiction *in rem* to enforce a demand for a seaman's wages, or other obligation arising *ex contractu*, unless the person instituting the proceedings is entitled

to a maritime lien at the time the proceedings are brought. If, then, we are right in our first contention, that no maritime or other lien can arise out of a receiver's contract, admiralty has no jurisdiction *in rem* to enforce payment of the several sums due libellants. If it is held that a maritime lien does attach as an incident to a receiver's contract, and is further held that the final decree of the court of equity in this case, and the sale of the libeled vessels and other property thereunder, is a complete adjudication of the rights of the libellants, and one which cannot be set aside, or reviewed in admiralty, the lower court had no power to render judgment in these cases. Whatever may be the conclusion of this court as to the correctness of our views, the *questions* for settlement are jurisdictional. The determination of these questions necessarily involves a consideration of the facts alleged in the amended libels. A determination of any legal question depends upon the facts existing in the particular case. Of course no attempt is made to doubt the general jurisdiction of the district court over admiralty causes. We claim in the first instance that while these cases are connected with the navigation of boats, they are, nevertheless, of a class not cognizable in admiralty. There are many such cases. Some of them are noted later in this brief. The mere fact that the subject-matter of litigation arises out of the operation of a boat does not give admiralty jurisdiction *in rem*. There are well-recognized exceptions. For instance, a master of a vessel under the general law has no lien. Neither has a person furnishing supplies in the home port. And it is

held that a mortgage given upon a vessel as security for a loan of money, not advanced for the purposes of a voyage, cannot be enforced in admiralty. The John Jay, 17 How. 399. The principal points presented are new. We claim they furnish another instance in which admiralty gives no lien. If we are right in our contention, the lower court did not have jurisdiction. If we are wrong, it did have.

It is held in Taylor v. Carryl, 20 How. 583, that "where a vessel has been seized under a process of attachment in a state court, and is in the actual custody of the sheriff, no valid seizure can be made of her so as to give *jurisdiction* in proceedings *in rem* in the District Court of the United States sitting in admiralty." And in Shields v. Coleman, 157 U. S. 168, 169, it was held by this court that "a Circuit Court of the United States has not the *power* to appoint a receiver of property already in the possession of a receiver duly and previously appointed by a state court." The question in the cases just quoted was whether a federal court could acquire jurisdiction over property *while* in the custody of a state court. The controlling question in the cases at bar is whether a federal court, sitting in admiralty, can acquire jurisdiction *in rem* over certain property, situated as previously herein explained, *after* the custody of the state court is relinquished.

As before noted, there are two other questions incidentally raised. Libellants Young and Raabe claim under the state statute. Our contention is that, at-

tached to the right to a lien given by the state statute is a condition that proceedings must be commenced to enforce the lien within one year after the cause of action arose. The amended libels show, as to the two libellants mentioned, that the causes of action in their favor accrued more than one year prior to the filing of the libels. If we are right in our contention, this also raises a question of jurisdiction. The life of the lien given by the statute is limited to one year after the cause of action arises. If no proper proceedings are instituted within the time designated, the lien is lost. If the lien has expired by limitation, no proceeding *in rem* can be brought to enforce it. The parties are relegated to whatever remedy the law may afford them *in personam*. Admiralty has no power to enforce a lien, by a proceeding *in rem*, which does not exist at the time its jurisdiction is invoked. And so with the remaining question hereinbefore noted. If it is true, as we contend, that the lien given a mariner is a personal privilege, and therefore incapable of assignment, the court had no jurisdiction *in rem* to enforce the claim of Geo. Dowsett acquired by him by assignment from Tellef Telleffsen. The reason is clear. The court had no jurisdiction to enforce a lien, because there was no lien to enforce. The existence of a lien is the life of a proceeding *in rem*. If there was no lien originally, or, being one, if it has been lost, the remedy cannot be invoked. Nothing remains but a personal right of action.

It will be shown hereafter that the decisions of the

federal courts upon the last two questions are conflicting. We submit to the court that these questions, in the interest of harmony of decision, should be finally determined here.

The lower court has certified that these appeals are taken solely on the questions of jurisdiction arising out of the facts shown by the record now in this court. We think we are at liberty to argue any jurisdictional question so appearing. If we are mistaken in supposing the last two questions are jurisdictional, the appeal cannot be affected by the error. The arguments will not be considered.

As we apprehend it, under the judiciary act of 1891, the test of a right to an appeal to this court from a Circuit or District Court of the United States, is the *question* to be reviewed. If it is purely a jurisdictional one the appeal lies exclusively to this court.

Smith v. McKay, 161 U. S. 355, 357.

Shields v. Coleman, 157 U. S. 168, 177.

In re Lehigh Mining & Mfg. Co., 156 U. S. 322.

United States v. Jahn, 155 U. S. 109.

McLish v. Roff, 141 U. S. 661, 667, 668.

The circuit court of appeals for this circuit has held it has no jurisdiction to entertain such an appeal.

Allen v. Strong, 70 Fed. 273.

Barling v. Blank, 50 Fed. 260.

United States v. Sutton, 47 Fed. 129.

All of these cases were tried upon exceptions to the amended libels. The court below, as shown in the earlier pages of this brief, certified the decree, the amended libels and the amended exceptions to this court. As we understand, the rule requiring the lower court to certify the question to be reviewed was made in the interest of brevity. The question to be determined respecting the jurisdiction might frequently arise during the course of the taking of testimony, or might otherwise be disguised in a long record, a large portion of which would be unnecessary to the decision, and would but embarrass the court in arriving at the true point for settlement. In these cases the questions arise upon the amended libels and the exceptions. It was considered that a certification of the short record, together with the appeal on the question of jurisdiction, and the certificate of the court that the appeal is taken solely upon that ground, would present the matter as clearly and with as much brevity as it could be presented in any other form. It was also considered that it is necessary to fully understand all of the allegations of the amended libels in order to thoroughly comprehend the questions raised. The portions of the record certified to by the court fully explain all the facts necessary to be considered here.

Record Three Sisters, pp. 27-35.

Record Dowsett, pp. 30-37.

Record Wilson, pp. 25-31.

The clerk of the court, we notice from the printed record, has certified, in addition to the papers last referred to, the other documents filed in the cause. These, with the exception of the petition for appeal, supersedeas bond and assignment of errors, are unnecessary to be considered.

In Shields v. Coleman, 157 U. S. 168-9, this court says: "The court below, in its order granting the appeal, said: 'This appeal is granted solely upon the question of jurisdiction'; and made further provisions for *determining what part of the record* should be *certified* to this court under the appeal, under which it subsequently *directed the portions of the record to be certified* to this court, and the record was prepared accordingly. Held, that this was a sufficient *certificate* of a question of jurisdiction under the provisions of the judiciary act of March 3, 1891, c. 517, 26 Stat. 826, 827."

To the same effect is Smith v. McKay, 161 U. S. 355, 357.

It would seem that the method adopted here has received the direct sanction of this court.

The claimants filed exceptions to the rulings of the lower court. These exceptions are broad enough to cover all the points made in this brief. When the questions raised go to the jurisdiction of the court and appear upon the face of the proceedings, it would

seem unnecessary to file exceptions. This is especially true under the liberal practice in admiralty. . . . "When the want of jurisdiction is apparent on the face of the libel, there can be no doubt of the admissibility and substantial propriety of a simple demurrer. . . . And indeed it matters not in what mode, however informal, in such cases, the fact of a defect of jurisdiction is brought to the notice of the court; for in whatever manner it may be done the court will, of course, thenceforth desist from all further cognizance of the cause, or, in the language of the English High Court of Admiralty, will 'prohibit itself.' "

The Bee, Wares R. 332.

2 Conkling's U. S. Admiralty (2d Ed. Rev.), p. 229.

It will be observed that the exceptions filed to the amended libels do not specifically direct attention to the point to be extensively dwelt upon here, that the final decree of the court of equity renders the subject matter of the present litigation *res judicata*, although this point is involved in the general and particular exceptions expressly noted. All of the facts necessary to form a basis for this argument appear upon the face of the amended libels.

The syllabus of the case of The Maggie Hammond, 9 Wall. 435, reads: "Where a libel was filed against a foreign ship in an admiralty case, in an admiralty court of the United States, the libellant and claimant both being foreigners, the place of shipping and the place of

consignment being foreign ports, and the whole ground of libel a matter which occurred abroad, this court considered the question of jurisdiction open for argument here, though it was not raised by the pleadings, and had not been suggested by any one in the court below." And on page 449 of the decision the court says: "Aside from the merits of the controversy they also contend that the district court had no jurisdiction of the case; and as that is a preliminary question, it will be first considered before examining the questions more immediately involved in the pleadings. No such question is directly presented in the pleadings, and none such was raised in the court below, still, the better opinion is that the question is open to the appellants as it substantially appears that the home port of the ship is Yarmouth, Nova Scotia, and that both the libellants and claimant are foreigners."

II.

Under the general maritime law an employe on board a vessel engaged in navigation is entitled to a lien upon the vessel for sums due him and arising out of his employment. This lien he may enforce in an admiralty court by a proceeding *in rem*. And it is provided in Sec. 4535 of the Revised Statutes that "No seaman shall by any agreement other than is provided by this title, *forfeit his lien upon the ship*, or be deprived of any remedy for the recovery of his wages to which *he would otherwise have been entitled*, and every stipulation in any agreement inconsistent with any provision of this title,

and every stipulation by which any seaman consents to abandon his right to his wages in the case of the loss of the ship, or to abandon any right which he may have or obtain in the nature of salvage, shall be wholly inoperative." Notwithstanding the general admiralty rule, and notwithstanding the federal statutes, every maritime contract and every maritime service does not give rise to a maritime lien enforceable against the ship by an action *in rem* through the medium of a court of admiralty. "To sustain a maritime lien, there must be in all *cases, either in fact or by presumption of law, a credit of the ship; and when such credit is negatived by the evidence, no such lien, whether maritime or statutory, will be recognized.*"

The Advance, 60 Fed Rep. 766, 767.

The Samuel Marshall, 4 C. C. A. 385.

Id. 54 Fed. Rep. 396, 403.

The Sirocco, 7 Fed. Rep. 599.

The Erastina, 50 Fed. Rep. 126.

Beinecke v. Secret, 3 Fed. 665, 667.

Consolidated Coal Co. v. The Secret, 6 Fed. Cases, 338.

Scott v. Failes, 5 Benedict, 82.

A lien upon a vessel for personal services and the consequent right to proceed against it *in rem*, under the forms of the practice in admiralty, is based upon either a presumption of law or fact, that the person seeking the remedy performed the services upon the credit of

the ship, and not upon the personal responsibility of the owner, or those in charge. A reference to the cases above cited will show that this principle has been applied in various instances, to wit: towage, supplies and wharfage, wages, and coal delivered to a *foreign* vessel. In some cases, and under some circumstances, the attendant presumption is against, and in others is in favor of the lien. This idea is coeval with admiralty jurisprudence. It found a ready application in the case of supplies furnished a vessel in the home port. It has never been ignored, but, on the contrary, has been broadened and extended as new circumstances occurred and new conditions arose. In this respect the common law finds an analogy in the rules of admiralty. The cases show that the presumption of law is sometimes conclusive in favor of the lien, and sometimes conclusive against it. One of the decisions cited above (7 Fed. Rep. 599) is an authority for the statement that the presumption in favor of the lien is sometimes rebuttable. So far as we know, the first question to be examined is new. It has never been determined by a court of admiralty—certainly not by this court. In the application of an old rule to new facts, particular attention will be given to the reason of the rule. The reason itself must be applied, and the rule must follow upon the reason. The first inquiry is, Did the libellants, as a matter of law or fact, render these services upon the *credit of the vessels*, or were the services performed upon the credit of the court of equity in charge of the property, and upon the credit of the ordinary rules of equity, giving the persons who are employed by the

court a first right to the earnings of the property under the control of the court; a first equitable lien upon the *corpus* of the property, and a right, if necessary, to the entire proceeds thereof upon judicial sale? Whatever may be the true answer to this question, there is yet another one present in all the cases at bar, and applicable alike to the claim of each of the libellants. The amended libels show that the property in the hands of the receiver, including the railway, steamship and steamboat lines, as well as all franchises of the defendant company, the Oregon Pacific Railroad, was sold by the receiver. The money thus received was applied, as in equity it must be applied, first, to the payment of the claims outstanding against the receivership, and incurred by the receiver for labor and supplies. It is apparent that the money derived from the sale of the entire property of the railroad, its franchises and all, was insufficient to pay these claims for labor in full. *Can these libellants, after all of this property, including the vessels libeled, has been sold for their benefit in a judicial proceeding, and after they have received their pro rata of the proceeds therefrom, calculated according to the established rules of the court of equity directing and conducting the sale, invoke the aid of a court of admiralty, and cause a resale of the identical property?*

Section 4535 of the Revised Statutes, above quoted, does not aid either party to this controversy. The question here is not whether a seaman has attempted to relinquish a "remedy for the recovery of his wages to

which he would otherwise have been entitled." Nor is it a question whether a seaman is attempting to "forfeit his lien upon the ship." The genuine question is whether the libellants were ever entitled to a lien, or to the remedy invoked. As we read the section noted, it does not assume to establish a rule of admiralty. It does not extend the seaman's right to a lien. It merely declares that any contract made with the view of abridging his rights or remedies, as then recognized by the settled practice of admiralty, shall be void. It gives no new right, no new lien, no new remedy. It prevents the bargaining away of those existing.

In the case of the Three Sisters the amended libel alleges that the boat was engaged in traffic on the Willamette river only between points where there were regularly employed agents of the receiver; that the duties of the captain thereon were only such as pertained to a pilot; that the boat carried a purser whose duty it was to sell tickets and to receipt for and see to the delivery of freight at the various points where agencies were established; that the captain had nothing whatever to do with the equipment or supply of the boat, nor the employment of the various persons occupied thereon. These averments state the facts as they existed and are admitted. They were made for the purposes of showing that the *reasons* which forbid a master having a lien in admiralty were absent here. And they supply reasons why an employe on board should not have a lien although ordinarily entitled thereto. In the cases against the Resolute, this state of facts does not

so plainly appear. It is shown, however, that the last-named vessel was employed locally on the bar at Yaquina Bay. It may, therefore, be fairly assumed that the facts are substantially the same.

It is apparent, then, at the very outset, that these cases differ from the ordinary ones in admiralty. The men on board were employed by a receiver, and were subject only to him. So far as their relations towards each other were concerned, they were in their nature independent. The power to employ, and the power to discharge was exercised by the receiver.

When this property was placed in the hands of a receiver, it was at once put under the government of a court of equity. The rules of equity applicable are well understood. All employes of the court, whether serving as brakemen or sailors, were bound to take knowledge of these rules. The receiver could not give employment to any one in any manner unauthorized by the law of receiverships. The persons employed were compelled, by the force of the law itself, to accept the employment upon the terms and under the conditions imposed by the rules of equity. These rules make no distinction between a manager, a sailor, or a day laborer. In the matter of their right to payment, in the time of payment, and the sources from which they were to receive their compensation, they all stood upon an equality. The same remedies were open to all alike. Equity knows no favor. Equality is equity. One of

the settled rules of equity is that property in the custody of a receiver is in the custody of the law.

Wiswall v. Sampson, 55 U. S. 64.

McNulta v. Lochridge, 141 U. S. 327, 332.

Another settled rule is that those who contract with a receiver must *look to the trust property and its proceeds for compensation.*

Barton v. Barbour, 104 U. S. 126, 130.

Turner v. Peoria & S. R. R. Co., 95 Ill. 134-5.

Vanderbilt v. Central R. R. Co., 43 N. J. Equity, 669, 670.

In Turner v. Railroad, 95 Ill. 135, the court, referring to receiver's certificates, says: "Whether they are *payable in full* or only *pro rata* depends on *the fact of the sufficiency of the fund under the control of the court.* Again, there is no personal liability on any one for their payment. Only the fund which the court controls is bound, and that only when it is equitable to charge it with the payment of the money evidenced thereby. Their payment can only be coerced by the application of the court having control of the trust property for an order upon its acting officer."

It is the duty of a court appointing a receiver to pay the debts of the receivership out of all moneys coming into the receiver's hands, either from the operation of

the road, or the sale of the *corpus* of the property. And the debts contracted for necessary operating expenses are, in equity, a lien on the property, prior to the lien of the mortgage. One of the purposes of the sale of the property by the court of equity is to pay these liens.

Kneeland v. American L. & T. Co., 136 U. S. 89.

Kneeland v. Bass Foundry, etc., 140 U. S. 592.

Bellingham Bay Imp. Co. v. Fairhaven, etc., Ry. Co., 49 Pac. Rep. 514.

What, then, is the presumption of law arising from these contracts for personal services? Is it to be held that the employes of a court of equity must look to the rules of equity for protection, or is it to be held that they, or some of them, may look to a court of admiralty for the enforcement of the contracts made with the equity court? Does the employment of a deck hand on a river boat destroy the rule of equity that those dealing with such a court must look to the trust property for compensation? It was argued in the lower court, with success, that, under the general maritime law, a seaman has a lien for his wages regardless of all conditions and circumstances of his employment or service; that the maritime law in this respect subordinates every other rule of law; destroys the principles of equity jurisprudence, and pays no heed to the exercised jurisdiction of a court of competent authority. It was contended further, that the final decree of a court of equity does not conclude even the employes of

that court; that among the employes of the equity court there are certain ones entitled to the protection afforded by admiralty, and these must be favored to the distinct pecuniary detriment of all others of their fellow employes. In our judgment these arguments are based upon two palpable and fundamental errors: First. They do not appreciate or contemplate the fact that, in some circumstances, under the general maritime law, the rendition of services as a seaman gives rise to no lien. Second. They fail to recognize the character of receiver's contracts, and the power and authority which a court of competent jurisdiction may exercise when it has complete control of a particular subject-matter in litigation, and of the binding and conclusive force of its final orders and decrees, regardless of whatever remedies might have been given, in the absence of a complete adjudication, in some other court of equal but different jurisdiction. As hereinbefore shown, it is not true that every maritime employment carries with it the right to a maritime lien, even though the service performed is of the nature which ordinarily gives a lien to a mariner. Certain things must concur. First and foremost there must be a credit of the ship. Out of the same engagement which gives rise to a mariner's lien, and a right to enforce it by a proceeding *in rem*, spring other legal rights and remedies. Whenever the law gives a lien for wages it also gives a right *in personam*, and the mariner may elect which remedy to pursue. His claim arises *ex contractu*. We submit the statement for the consideration of the court, that no lien can arise out of any employment, or by reason of the performance of any

labor of the kind mentioned, unless at the same time there arises a personal right of action. The two remedies are inseparably connected. One cannot exist without the other. They are both incidents of the same contract. In Taylor v. Carryl, 20 How. 583 (Star page 600), this court said: "In all causes of action, says the judge of the admiralty of Great Britain, which may arise during the ownership of the persons whose ship is proceeded against, I apprehend that no suit could be maintained against a ship where the owners were not themselves personally liable, or where the liability had not been given up. (The Druid, 1 Wm. Rob. 399.) And the opinion of this court in The Schooner Freeman v. Buckingham, 18 How. 183, was to the same effect." In the cases at bar did any personal right of action accrue, and, if so, against whom? Certainly not against the receiver or any officer subordinate to him, for they were officers of the court, without personal liability, and the sailors did not deal or contract with any one else.

If no right *in personam* arose, how can it be claimed that there is a right *in rem* when the law, which gives the right *in rem*, at the same time and for the same service, gives a right *in personam?* This argument alone shows that the libellants have not all the rights under their contracts of employment usually appertaining to mariner's contracts. The reason is because they are contracts of a court of equity, and the rules of equity, which allowed the making of the contracts, necessarily affixed to them the incidents of receiver's con-

tracts. The rules of equity and admiralty are inconsistent. An admiralty court cannot make a contract. A court of equity cannot make a contract other than of the kind admitted by its principles. It follows that these contracts, being those of a court of equity, are governed by equitable rules, and chief among them is the method of payment, hereinbefore stated. If it is true that these libellants have liens on the vessels libeled, they must also have a personal right of action against the receiver as an individual. If the admiralty law supersedes one rule of equity, it should supersede all of them.

An important element in these cases is the fact that at no time were any of these vessels beyond the territorial jurisdiction of the court having them in charge. At no time were they expected to go beyond the jurisdiction. The character of the vessels precluded that possibility. When a vessel, being operated by a receiver, goes beyond the territorial jurisdiction of the appointing court, it immediately becomes subject to the process of the courts sitting in such foreign jurisdiction. This statement is not more true of admiralty than it is of courts of common law. It has been intimated, perhaps decided, that a foreign court acting upon a principle of comity, will decline to seize property in charge of a receiver of another court coming within its jurisdiction. We understand, however, the rule now to be that such foreign court will protect its own citizens, and will subject any property coming within its jurisdiction to the payment of their claims. Such a vessel

in a foreign jurisdiction is subject to seizure and attachment in an action at law, as well as a proceeding in admiralty. A vessel, sailing the high seas, must necessarily carry some one possessing authority to supply and man her, and the fact that she was dispatched on her voyage by a receiver would not prevent the presumption of a credit to the ship from arising in favor of material men and of sailors. *The Court* in sending the vessel beyond the limits of the state, would *abandon its jurisdiction* and subject her to those rules of admiralty made necessary for a successful voyage and a safe return. A case of this kind does not, however, stand upon the same basis as those on trial here.

We concede that the appointment of a receiver would not have any effect upon maritime liens which accrued prior to his appointment. Liens of this description are no exception to the general rule. The appointment of a receiver does not discharge any prior lien.

Moran v. Sturgis, 154 U. S. 256, 282.

High on Receivers (3d Ed.), Sec. 138.

We also concede that a purchaser under a receiver's sale would take property so sold subject to any lien attaching prior to the receivership and remaining unpaid. But it is denied that any lien, of any description, can arise within the jurisdiction of the court and out of its contract made while administering its equitable relief. It is also denied that, if such a lien can arise, it

will survive the final decree of the court in the cause in which the receiver was appointed and the contract made.

It is further admitted that while a vessel is in the custody of the law, she is subject to a lien, in case of accident or collision. This is true even when the vessel is sequestered in the hands of a marshal.

The Esteban de Antunano, 31 Fed. 920-1-4.

Paxson v. Cunningham, 63 Fed. Rep. 134.

The reason for this, so far as we can perceive, is that no personal right of action can arise as against an officer of the law, while acting in his official capacity under and within the directions of the court whose officer he is. Unless a right to proceed directly against the offending vessel is given, the law would not afford a remedy for a distinct damage. As said in Paxson v. Cunningham, 63 Fed. Rep. 134, "A maritime lien upon the offending ship for an injury by a collision is a *jus in re* in the ship itself." . . .

In cases of this character the vessel is regarded as a "sentient being, endowed with a personality capable of being called to account for injuries inflicted by it."

1 Am. & Eng. Ency. of Law, p. 200.

The rule, however, is different in matters of contract. In the Esteban de Antunano, 31 Fed. Rep. 924, the court says: "When the sheriff of the parish of Orleans, Louisiana, seized and took into his possession, under

process from the state court, the steamship Antunano, she went into the custody of the law, and her contemplated voyage was broken up and abandoned, and thereby the authority of her owners and of their agents, the master and ship's husband, to thereafter affect the ship by any conduct or contract to result in a lien on the ship was ended. By the seizure all persons were notified of the change of control and possession. While the ship was in the custody of the law it is doubtful whether on any account or for any service (except perhaps for salvage or through a collision) any lien could arise on the ship; certainly not without the express authority of the court having the property in possession. Liens for supplies and materials are based on contracts entered into on behalf of the ship. When there is no representative of the ship or her owners authorized to contract, there can be no contract, and therefore no lien based on a contract. The supposed necessities of the ship or of her crew would warrant no person in interfering without the authority of the sheriff or the court." And, on page 926 of the decision, the court says: "The material men in this case may seem to be badly treated, but it is not the fact. Each one of them furnished supplies with his eyes wide open —or else willfully shut—with the hope that, through some payment or settlement, the seizure of the ship would be released and the abandoned voyage resumed. Neither the ship nor the claimants are responsible for their too sanguine expectations." See also

Parker v. The Little Acme, 43 Fed. Rep. 925.
The Augustine Kobbe, 37 Fed. Rep. 696.

We realize in the cases last referred to the vessels were sequestered in the hands of officers of the courts having jurisdiction over the controversies pending, and that these officers were only empowered to keep the vessels and not to operate them. We also understand that the vessels libeled in these cases were being operated by the command of the court having them in charge. We cite these cases for the purpose of showing that the lien for wages arises out of contract, and springs from a presumption of a credit of the ship, as well as to note the distinctions drawn in cases of accident. These decisions are authorities to this further effect; that a person contracting with those in charge of a ship are held to some understanding of the situation of the vessel, and the power to bind the ship possessed by those assuming to act with regard to her. If a vessel in a particular case happens to be in the hands of a marshal, those contracting for the rendition of personal services or the furnishing of supplies are presumed in law to know the nature of the custody and the limitation of the power of the officer. In no other way can the authority of the court be maintained. If a vessel chances to be in the custody of a court of equity those contracting with the court or its employes must be presumed in law to know of that fact. And they must also be presumed to know that the rules prevailing in equity, as well in reference to the means of paying employes as in all other respects, are different from the rules in force in admiralty, and that the equitable rules control.

The receiver and all of the employes engaged in conducting the business of the railway and steam navigation lines of the defendant corporation were servants of the court. The court was one of competent jurisdiction; it had cognizance of the subject-matter of the litigation, and was proceeding to administer the well-settled rules of equity jurisprudence applicable in the particular case. The jurisdiction of the court was not partial. It was complete. Every act done by the receiver in purchasing supplies, employing servants, or to any other purpose, was the act of the court. *It was an exercise of jurisdiction.* It was contended, on the other side, and so decided by the lower court, that a maritime contract carried with it, as an incident, the right to a lien, and it is said this rule grows out of the necessities of commerce. We grant all that. But are the contracts in question maritime? And what commercial necessity exists for a lien in admiralty, when the property is at all times retained within the jurisdiction of the equity court, and when the court is bound under its rules to sell the vessels, if necessity arises, to pay the employes? There is no commercial or other necessity for a sale in admiralty when the power to sell in equity attaches as an *incident* to the contract. The same purpose is accomplished, but in a different forum, and in a different manner. The proctors for the libellants deem these considerations of no force. They open and close their cases with the declaration that these men made the contracts to work upon the vessels. That, they claim, is sufficient. It is true they made such contracts. But with whom? There were neces-

sarily two parties to the contracts. The sailors were the parties of the one part, and the court of equity the party of the other part. Did the court of equity renounce its principles and its jurisdiction when dealing with these favored individuals? It is impossible. It could not; it had no power to do so. No incident not known to the rules governing a court of equity could attach to any contract made by it. The very making of the contracts was an exercise of its equitable jurisdiction. We would say that the contracts were made by a court of equity, and the *incidents of a receiver's contract attached*, because of the jurisdiction of the court, and the character of the proceedings in which the contracts were made. A court cannot make a *contract* under which it may, by a hostile proceeding in another court, be ousted out of its own jurisdiction. *The libellants were employes of a court of equity, and not wards of admiralty.*

III.

It seems to us the argument necessary to be made to support the jurisdiction of admiralty in these cases totally fails to take notice of the system of laws as administered in the United States. In England at one time undignified contentions constantly arose between the courts of common law and admiralty. Very little respect seems to have been paid by either court to the process or orders of the other. In this country, as we understand it, there is no conflict in the jurisdiction of

the several courts, state or federal, common law, equity or admiralty. It is true that the rules governing in each forum are diverse, and the methods of procedure are different. Nevertheless the jurisdiction of courts of admiralty, of common law and of equity, is concurrent and co-ordinate, in the sense that when either of such courts, through its ordinary and known procedure, acquires jurisdiction of, and determines a particular subject-matter in litigation, the decree of such court is final and conclusive and cannot be reviewed, or the subject-matter thereof re-examined, in any other court. When a controversy has been determined by either of the tribunals named and has gone to final judgment, it is *res judicata* and cannot be reviewed or relitigated in the same court or in another tribunal administering different rules or applying different remedies. Counsel ask this court, as a court of admiralty, to decide that a court of equity by its final decree has failed to do justice in the particular case. It is tantamount to a request for a review of the final judgment of the equity court. It is a complaint, based upon the idea that if the matters had originally been under the jurisdiction of admiralty, different rules would have been applied. The admiralty rule is that the seaman has a lien paramount, practically speaking, to all others. The equity rule is that equality must prevail. It does not recognize one employe as being better than another. Each of the amended libels avers that the property in charge of the receiver was sold by him under the orders of the court. We contend that this decree is final and, after its affirmation by the Supreme Court of Oregon, conclusively settled all ques-

tions arising out of the receiver's management of the affairs of the corporation.

It is held that "the admiralty jurisdiction of courts of the United States, although exclusive on some subjects, is concurrent upon others. The courts of common law deal with ships or vessels as other personal property."

Taylor v. Carryl, 20 How. 583 et seq.

Freeman v. Howe, 24 How. 450-1-6.

The Hine v. Trevor, 4 Wall. 555, 556.

The Moses Taylor, 4 Wall. 411-412.

Tefft v. Sternberg, 40 Fed. 2-5.

Leon v. Galceran, 11 Wall. 185.

Steamboat v. Chase, 16 Wall. 522.

Sherlock v. Alling, 93 U. S. 99.

Schoonmaker v. Gilmore, 102 U. S. 118.

Insurance Co. v. Dunn, 19 Wall. 223.

New Orleans v. S. S. Co., 20 Wall. 387.

It is distinctly decided in the cases last cited that either a court of common law, or a court of equity, is competent to adjudicate questions arising out of maritime contracts. And that the jurisdiction is concurrent with admiralty. Such a court has no right to proceed *in rem* against the vessel, but it can hear and finally determine all such questions. And it may apply the remedy appropriate to the case. The only restriction resting upon the state courts in such matters is that

they may not adopt the forms of admiralty, but must proceed according to their own forms and administer remedies according to their own rules. The *result* is a *sale of the property.* And when once a state court has determined a matter it is settled, and cannot thereafter be brought within the jurisdiction of admiralty. We must make the confession, even though it be a humiliating one, that we cannot see any doubt about this. It is said in Taylor v. Carryl, supra, pages 599 and 600:

"It follows, by an inevitable induction from the cases of Harmar v. Dennie, 3 Pet. 299; Hagan v. Lucas, 10 Pet. 400; and Peck v. Jenness, 7 How. 612, that the custody acquired through the seizure of manual occupation of the Royal Saxon, under the attachment by the sheriff of Philadelphia county, could not legally be obstructed by the marshal, nor could he properly assert a concurrent right with him in the property, unless the court of admiralty holds some peculiar relation to the state courts or to the property attached, which authorized the action or right of its marshal. The relation of the district courts, as courts of admiralty, is defined with exactness and precision by Justice Story in his Commentaries on the Constitution. He says: 'Mr. Chancellor Kent and Mr. Rawle seem to think that the admiralty jurisdiction given by the constitution is, in all cases, necessarily exclusive. But it is believed that this opinion is founded on mistake. It is exclusive in all matters of prize for the reason that, at the common law, this jurisdiction is vested in the courts of admiralty to the exclusion of the courts of common law. But

in cases where the jurisdiction of common law and admiralty are concurrent (as in cases of possessory suits, mariners' wages and marine torts) there is nothing in the constitution necessarily leading to the conclusion that the jurisdiction was intended to be exclusive; and there is no better ground, upon general reasoning, to contend for it. The reasonable interpretation,' continues the commentator, 'would seem to be that it conferred on the national judiciary the admiralty and maritime jurisdiction exactly according to the nature and extent and modifications in which it existed in the jurisprudence of the common law. When the jurisdiction was exclusive, it remained so; when it was concurrent, it remained so. Hence, the states could have no right to create courts of admiralty as such, or to confer on their own courts the cognizance of such cases as were exclusively cognizable in admiralty courts. But the states may well retain and exercise the jurisdiction in cases of which the cognizance was previously concurrent in the courts of common law. This latter class of cases can be no more deemed cases of admiralty and maritime jurisdiction than cases of common-law jurisdiction.' " (3 Story's Com., Sec. 1666, note.)

In conformity with this opinion, the habit of courts of common law has been to deal with ships as personal property, subject in the main like other personal property to municipal authority, and liable to their remedial process of attachment and execution and the titles to them, or contracts and torts relating to them are cognizable in these courts.

It has not been made a question here that the Royal Saxon could not be attached, or that the title could not be decided in replevin. But the district court seems to have considered that a ship was a juridical person, having a *status* in the courts of admiralty, and that the admiralty was entitled to precedence whenever any question arose which authorized a judicial tribunal to call this legal entity before it. The district court, in describing the source of its authority, says of the contract of bottomry that "it is made with the thing, and not the owner," and that the contract of the mariners is similar; that the *res* "represents" in that court all persons having a right and privilege, while the rights of the owner are treated as something incorporeal, separable from the *res*, and which might be seized by the sheriff, even though the *res* might be in the admiralty. The representation is not true in matter of fact, nor in point of law. Contracts with mariners for service, and other contracts of that kind, are made on behalf of owners who incur a personal responsibility; and if lenders on bottomry depend upon the vessel for payment it is because the liability of the owner is waived in the contract itself. "In all causes of action," says the judge of admiralty of Great Britain, "which may arise during the ownership of the persons whose ship is proceeded against, I apprehend that no suit could ever be maintained against a ship where the owners are not themselves personally liable, or where the liability had not been given up." (The Druid, 1 Wm. Rob. 399.) And the opinion of the court in The Schooner Freeman v. Buckingham, 18 How. 183, was to the same effect.

In courts of common law the forms of action limit a suit to the persons whose legal right has been affected and those who have impaired or injured it. In chancery the number of parties is enlarged, and all are included who are interested in the object of the suit; and as the parties are generally known, they are made parties by name and special notice.

In admiralty all parties who have an interest in the *subject* of the suit—the *res*—may appear and each may propound independently his interest. The seizure of the *res* and the publication of the monition or invitation to appear is regarded as equivalent to the particular service of process in the courts of law and equity."

We take it to be settled that when one court of competent power acquires jurisdiction over a subject-matter of litigation and proceeds to final judgment, that judgment is conclusive, even though the parties litigant might in the first instance have selected another forum for the settlement of their differences. Hence, the well-recognized plea of a former adjudication. It is not necessary to cite any authority to support this statement as a general proposition. The reasons for the establishment of the principle are many and obvious. The force of judgments rendered in the United States comes direct from the constitution. This court is asked to make an exception in favor of a court of admiralty and against a court of equity. It is asked to go further than that. Counsel would have this court declare that the *act* of exercising jurisdiction in equity *confers* jurisdiction on admiralty.

Suppose a receiver is appointed in a federal court of a corporation engaged *exclusively in operating a line of steamboats on a river.* The receiver, pursuant to the orders of the court, purchases supplies and employs various individuals in different capacities on board the vessels. The earnings derived from the operation of the lines are insufficient to pay the wages of the employes, and the claims of those furnishing supplies. The employes and material men seek to libel the vessels in admiralty. The district judge, sitting in the circuit court, appointed the receiver and supervised the management of the property. The same judge, sitting in admiralty, pronounces judgment upon the showing made in the libel. Would he decide that he was powerless to enforce his contracts, made as chancellor, and proceed in admiralty to sell all of the property in his charge in equity? To say the least, this would be a curious termination of the equity proceedings, and a singular adjustment of the rights of those concerned. We suppose the chancellor would not have any judicial knowledge, in the equity case, of the admiralty proceedings. And we are incapable of surmising his emotions upon being formally notified by the receiver whom he had placed in charge of the property of the complete asportation of the subject-matter of the equity suit. A proceeding of this character would certainly not be accompanied by the gravity customarily attending judicial action. Suppose again that no libel is filed. The court of equity proceeds to final judgment. A decree is entered directing the sale of all the property in the hands of the receiver; first, to pay the expenses of opera-

tion incurred by the court. The property is not worth, and therefore it does not bring, the amount outstanding. All of the money realized is distributed pro rata among the employes and material men. A part of the claims remain unpaid. Would the equity judge, sitting in admiralty, take cognizance of a libel brought by the employes and material men for the unpaid balance, seize the property in the hands of the purchaser at the receiver's sale, and then sell the same property over again? It seems to us that upon the application first suggested the court would rule that equity had the power, which it would exercise, to sell the property for the benefit of the employes and others equally entitled. And, upon a libel filed after the receiver's sale, the ruling would be that the property had once been sold for the benefit of the libellants and the title had passed free from their claims. The libellants, strictly speaking, would not be parties to the equity proceedings. Nevertheless, the primary duty of the court is to protect their interests, and in the case supposed, as in these cases, the decree would provide that the property be sold for their benefit, and it would be so sold. If the decree contained error it could only be corrected on a direct appeal. If a double sale could not be made when the entire property consisted of steamboats, it could not be made in these cases where the property consisted half of steamboats and half of railroads. We apprehend the jurisdiction of admiralty is not influenced, nor does it depend upon a calculation of the proportion the steamboat lines bear to the railroad lines. Sailors in admiralty, *and in equity* are entitled to have the vessels sold to pay their

wages. In neither court can they twice sell the same property for the same purpose, nor can they accomplish this end by proceedings in both courts. The *final decree* of the court of equity is as much an *adjudication* of the rights of employes and all others interested as it would be if they were all joined in the suit. The court employing these seamen was at all times open to receive any representation, by proper petition, which they might have seen fit to make, looking towards the protection of their rights. In admiralty they would not have been entitled to any greater relief than they were in equity. In equity they were entitled to and received the entire proceeds of this hopelessly bankrupt property. Can they, after accepting their proportion of the moneys arising from the sale, rush into another court and cause the resale of a part of the same property for their own peculiar and special benefit?

Suppose a sailor entitled to a lien on a particular vessel should elect to bring an action in a court of common law, as he might do, and in the proceedings thus instituted sell the vessel under execution for his claim. The amount realized is not sufficient to pay him in full. Could he then proceed in admiralty *in rem*, and seize the ship in the hands of a purchaser at the first execution sale? The case supposed is really not different from those at bar. The sailor would have a right to bring an action at common law for the amount due him. The decisions expressly so hold, and the statutes of the United States reserve it to him. Section 563 reads as follows: "The district courts shall have jurisdiction as

follows: . . . Eighth. Of all civil causes of admiralty and maritime jurisdiction; saving to suitors in all cases, the right of a common-law remedy, where the common law is competent to give it."

It is true that a seaman cannot, in an ordinary case, bring suit in a court of equity to enforce the claim due him. In these cases, however, the demands in his favor arose out of the operation of the property of the railway company by an equity court, and after its jurisdiction had attached. Here, by reason of circumstances of an unusual character, the seaman *was in* a court of equity, and that court had complete power and control over all matters pertaining to the management of the affairs of the corporation. Certainly it will be conceded if equity had the power to make the contracts it had power to enforce them, and they must in their nature be equitable contracts. Suppose these libellants had represented by proper petition to the court of equity having these matters in charge, that they, as employes on board boats, had a right to full payment of their wages out of the proceeds of the sale of all of this property before any one else was entitled to receive anything. They would have had a standing in court for the purpose of making this or any other pertinent representation. And suppose they had supported their petition by the argument that in admiralty they would be entitled to such a priority. The court of equity could have made but one answer. It was not administering admiralty rules. That the contracts in question were made with a court of equity and no favoritism was permitted by its doc-

trines. That they were limited to the remedy given by equity. Suppose, further, that these employes should have attempted in some fashion, it is inconceivable how, to move a court of admiralty to cause a distribution of the funds arising from the sale, and in the hands of the equity court, in accordance with the rules of admiralty. There is no practical difference between the case supposed and those at bar. In the case supposed, they would attempt to interfere through admiralty with the apportionment of funds in the hands of a court of equity by denying the jurisdiction of the court to apportion them otherwise than as prescribed by the admiralty law. In the cases on trial here, they have accepted their *prorata* of the fund, and now seek, in admiralty, to deny the jurisdiction of the equity court, and to compel a relitigation of the matters already determined and a readjustment of their rights.

One other point in this connection. A suit to foreclose a mortgage is in its nature a proceeding *in rem.*

Farmers Loan & Trust Co. v. Nor. Pac. R. R. Co., 69 Fed. 871-2-8, 880-882-884.

Martin v. Pond, 30 Fed. 15.

Railway Co. v. Gay, 26 S. W. 599.

In the case of the Farmers Loan & Trust Co. v. Nor. Pac. R. R. Co., supra, at page 884 the court says: . . . "And proceedings *in rem* are impossible in a court having no jurisdiction of the *res*. Now as the

custody, control and operation of a railroad through receivers must be pursuant to proceedings *in rem* jurisdiction thereof cannot be acquired by a distant court, although it may have jurisdiction to foreclose the mortgage by a suit *in personam*."

It may be said that the suit to foreclose the mortgage mentioned, in which these vessels were sold, was not a proceeding *in rem*, as the phrase is generally used. All of the property, however, was necessarily in the possession of the court, and was sold in specie under a decree directly authorizing the sale. Whether the proceeding is called one *in rem*, or is properly designated by another name, is purely a question of nomenclature. The principle is the same.

Mr. Chief Justice Marshall says, in speaking of a judgment *in rem* in Williams v. Armroyd, 7 Cranch, 423, 432, cited in Hilton v. Guyot, 159 U. S. 167: "The sentence of a competent court proceeding *in rem* is conclusive with respect to the thing itself, and operates as an absolute change of the property. By such sentence the right of the former owner is lost, and a complete title given to the person who claims under the decree. No court of co-ordinate jurisdiction can examine the sentence. The question, therefore, respecting its conformity to general or municipal law, can never arise, for no co-ordinate tribunal is capable of making the inquiry." And it has been very recently held in Hilton v. Guyot, supra, page 167, that "the most common illustrations of this are decrees of courts of admiralty and

prize, which proceed upon principles of international law. . . . *But the same rule applies to judgments in rem under municipal law.*" See also Eunis v. Smith, 14 How. 251.

And it is decided that, "By the law of most if not all civilized nations, the sale of a vessel by a proceeding *in rem*, in a court of competent jurisdiction, extinguishes all liens upon her and vests a clear and indefeasible title in the purchaser."

The Amelie, 6 Wall. 18.

Taylor v. Carryl, 20 How. 583.

Freeman v. Howe, 24 How. 450.

Tefft v. Sternberg, 40 Fed. 2.

It is clear that the court of equity was a court of competent authority. It had jurisdiction of the subject-matter of the litigation. The jurisdiction was exercised. Final decree was entered and affirmed by the court of last resort. The property seized under the process of the district court has been once sold for the benefit of libellants. It cannot be again sold in admiralty, or elsewhere, for the same purpose. The libellants are creditors of the receiver and stand upon precisely the same footing as all other creditors. When they were employed they gave credit to the entire trust property. They have received the full proceeds arising therefrom.

IV.

We think these cases will be determined upon the points hereinbefore suggested. We ask permission, however, to briefly present two other points relating to different branches of the cases. The questions are of importance and the authorities conflicting. If these remaining questions are not jurisdictional ones, the arguments will not be considered.

Libellant George Dowsett sues on a claim due him personally and on another claim transferred to him by assignment. The point was made in the lower court that a right to a lien in admiralty is a personal privilege and one which cannot be assigned so as to give the assignee a right to maintain a proceeding *in rem in* admiralty. This seems to have been the ruling in the following cases:

Logan v. The Aeolian, 15 Fed. Cases, 786.

Rusk v. The Freestone, 21 Id. 19.

The Pride of America, 19 Fed. Rep. 607, 608.

The Gate City, 5 Biss. 200.

The opposite view is expressed in

American Eagle, 19 Fed. 879.

M. Vandercook, 24 Id. 474.

Liberty No. 4, 7 Id. 231.

The New Idea, 60 Id. 294.

V.

It is contended by the appellants that a court of admiralty has no jurisdiction to enforce the claims of R. J. Young and George Raabe in the case of the Three Sisters, and the claims of the same parties in the case of the Wm. M. Hoag, because they are barred by the limitation of the Oregon statutes. It has been stipulated that the decision in the case of the Three Sisters shall determine the points involved in the case of the Wm. M. Hoag. Young and Raabe each acted as captain. The amended libel states that Raabe acted "as captain and watchman in charge of said boat at the agreed price of $125.00 per month." Under the general admiralty rules the master of a vessel is not entitled to a lien for his wages. The rule is the same when the master employs himself in some other and additional capacity.

14 Am. & Eng. Ency. of Law, p. 430 and note.

M. Vandercook, 24 Fed. Rep. 472. 474-5.

The Aeolian, 1 Biss. 321.

The existence of this rule made it necessary for opposing counsel to rest these claims upon the provisions of the law of Oregon extending the jurisdiction of admiralty. The state statute gives all persons employed upon a boat a lien to secure their pay. It is provided by Sec. 3706 of the law hereinbefore quoted, that "all actions against a boat or vessel under the provisions of this title shall be commenced within one year after the

cause of action shall have accrued." Judge Deady, sitting as the District Judge of the United States for the District of Oregon, construed this identical statute.

The City of Salem, 31 Fed. Rep. 616, 619.

The court, on page 619 of that decision, says: "In enforcing liens on vessels given by state statutes, courts of admiralty do so subject to every qualification and limitation attached to them by such statutes," citing The Alida, 1 Abb. Admr. 165. See also

The Red Wing, 14 Fed. Rep. 869.

The Lottawanna, 88 U. S. 559, 582.

In the case of the Red Wing, supra, the court says: "Where a lien for supplies furnished a vessel at its home port was, by the terms of the statute conferring it, only enforceable within nine months after the supplies were furnished, and the vessel to which they were furnished was, during the whole of the prescribed period, in the custody of a state court; *held* that the fact of such custody did not enlarge or suspend the operation of the state statute." The statement of facts in the case shows that "the defendant vessel was owned by a corporation whose assets, including the vessels named, had passed into the custody of a receiver, appointed by the state court *after the demand accrued*, and that immediately after such custody ceased the suit was instituted, although nine months had elapsed."

It was argued by the other side in the court below and so decided, that all of the provisions of the statute which undertake to confer upon state courts jurisdiction to enforce the liens given by the acts are void. "And," says the court, "the limitation of such actions is therefore necessarily ineffectual and void." It is definitely decided that the courts of the several states have no power to enforce maritime contracts by a proceeding *in rem*, because the constitution has reposed the exclusive jurisdiction, to apply the particular remedy, in courts of admiralty. But, with all deference to the learned court below, we are unable to comprehend what this has to do with the power of the legislature to attach conditions to new rights given by it to admiralty courts. It is well settled that admiralty will enforce a state statute giving liens on vessels where none existed under the general admiralty law, and that courts of admiralty will enforce the new law according to their own peculiar forms. If a court of admiralty will enforce a state statute of the kind mentioned, what overpowering authority has it to select certain portions of the statute and reject others? If the state may confer jurisdiction upon the admiralty courts, why can it not name the reasonable conditions upon which it may be exercised? Surely a suitor, invoking the aid of a statute, cannot mutilate it so as to serve his own purposes, and defeat the intention of the legislature. This section imposing a limitation is a part of the law conferring the lien, and was passed at the same time. In effect, the statute says certain persons may have a lien for one year, and no longer. The lower court says, by force of the statute

certain persons have liens for any number of years. We do not see anything in the case of the Hine v. Trevor, 4 Wall, 555, cited by the lower court, sanctioning such a construction. It cannot be said that this section is intended to apply only to the state courts. It is intended to govern any court in which the lien given may be enforced.

The meaning of this law, like any other one, we suppose is to be found by an examination of all its provisions. If a part of it is to be rejected, all of it ought to be upon the particular point. It seems to us, and we submit it to the court for decision, that the true interpretation of this statute is, that the persons specified may have the lien given on condition that they proceed to its enforcement within the period named. It is a right founded upon a condition. The condition is a part of the right. It modifies and limits the right. It detracts something from it. The grant and the condition annexed in reality form the right. The right to the lien is qualified. Precisely what it is can only be ascertained upon reading and accepting the whole statute. This court has held that it is necessary to comply with the formalities prescribed by the state law to perfect a lien. The Lottawanna, 21 Wall. 558, 559, 578, 579. On pages 578 and 579 it is said, "And a further act provides that if the privilege be not in writing, the facts on which it is based must be stated in the affidavit, which must be recorded" (citing Revised Civil Code). "*None of these requisites having* been performed, no lien can be claimed under the state law." From this

decision we infer the rule of this court is, that persons invoking the aid of a state statute in admiralty are compelled to comply with the statute in all essential respects. If it is necessary to comply with the terms of the staute to perfect a lien, why is not the same compliance imperative as a prerequisite to the right to enforce a lien? It was claimed by the libellants that the limitation would not run during the time the vessel was in the hands of a receiver. The case of the Red Wing, *supra*, fully covers this point. In support of this contention, the argument was that admiralty could not obtain jurisdiction without a seizure, and in consequence no action could be begun during the receiver's possession. This argument will not bear scrutiny. The statute hereinbefore quoted prescribes that all actions, etc., "shall be *commenced* within one year," etc. The *commencement* of an action and the acquisition of *jurisdiction* over the defendant, or the thing proceeded against, are two different matters. This particular statute stands alone. The question is, when within its meaning is an action deemed to be *commenced?* It would seem to us, that the filing of the libel is the commencement of the proceeding. The filing of the libel accomplishes something. If it does not commence the proceeding, we are at a loss to understand what effect it has.

The rule that a court of admiralty has no jurisdiction of the *res* until after seizure, does not state that the action is not commenced until after seizure. In the absence of any express statement in the law to that

effect, it would seem to us the filing of a libel is in law, what it is in fact, the commencement of the proceedings. How can any seizure be made until after the proceedings are commenced? Is the seizure of a vessel under a writ, issued at the instance of a libellant, the commencement of the proceeding, or is it the final act giving the court jurisdiction over the *res* under the proceeding theretofore commenced? In the City of Salem, 31 Fed Rep. 619, the court says, "Neither can the bank have a lien for this demand, unless it appears that it accrued within one year from the *filing of the libel.*" . . . And in the Red Wing, 14 Fed. Rep. 872, it is said, "The fact that the lien could not have been previously *enforced* by seizure, in consequence of the custody of the state court, does not enlarge or suspend the operation of the statute. The lien expired before the suit was brought." With deference to the lower court we suggest that this is the only correct construction of this statute. Any other might render the law nugatory, or else prolong the statutory period indefinitely. The limitation of this statute begins to run from the time the cause of action accrues, and not from the time plaintiff may choose, or be able, to seize the boat. Suppose a merchant should furnish supplies to a vessel, in this, her home port. The statute would give him a lien for the amount due. Payment is not made, and the vessel sails for a foreign country. Within a year a libel is duly filed and a writ issued commanding the marshal to seize the ship. He returns his inability to do so, because of the absence of the vessel beyond his jurisdiction. In such a case would it be held

that the action had not been commenced because no seizure had been made? We do not think so. It seems to us if the opposing argument is to prevail, the result will be not only a violation of the statute, but also of the principle of business policy which condemns secret liens. It was said by Mr. Justice Bradley, in the Lottawanna, *supra*, that "the existence of secret liens is not in accord with the spirit of our commercial usages, and a uniform law by which the liens in question should be required, within a reasonable time, to be placed on record in the custom house, like mortgages, and otherwise properly regulated, would be a great advantage to the business community."

It seems to us, by holding in accord with The City of Salem, and The Red Wing, *supra*, lien holders, will be compelled to file their libels within the year, although seizure cannot be made, thus making their claims matters of public record, and often of public notoriety.

A stipulation has been entered into agreeing to submit these causes on printed briefs, and without oral argument.

We trust that this fact, in connection with what seems to us the importance of the questions involved, will serve as an apology for the length of this brief.

Portland, Ore., August 27th, 1897.

Respectfully submitted,
WILLIAM T. MUIR,
Of Proctors for Claimants.

JOHN W. WHALLEY and
WILLIAM T. MUIR,
Proctors for Claimants.

No. 136, 135 & 138.

Brief of Whalley & Muir for

Filed Nov. 1897

IN THE

Supreme Court of the United States

OCTOBER TERM, 1897.

THE STEAM TUG "RESOLUTE," A. B. HAMMOND, and E. L. BONNER,
Claimants and Appellants.
vs.
HENRY E. WILSON, SIDNEY G. WOLFKILL, THOMAS NELSON & CHARLES JAHN,
Libellants and Respondents.
No. 16,200

THE STEAM TUG "RESOLUTE," A. B. HAMMOND and E. L. BONNER,
Claimants and Appellants.
vs.
GEORGE DOWSETT,
Libellant and Respondent.
No. 16,199

THE STEAMER "THREE SISTERS," THE OREGON CENTRAL AND EASTERN RAILROAD COMPANY,
Claimants and Appellants.
vs.
R. J. YOUNG, M. BELL, C. A. BELL, H. ROBERTSON, W. HOWELL, W. H. SUTTON, *et al*,
Libellants and Respondents.
No. 16,202

Appeal from the District Court of the United States for the District of Oregon.

BRIEF FOR APPELLANTS

IN REPLY ON MOTION TO DISMISS APPEALS.

JOHN W. WHALLEY and
WILLIAM T. MUIR,
Proctors for Claimants.

WILLIAM T. MUIR,
Of Proctor for Claimants.

The Lewis & Dryden Printing Co.
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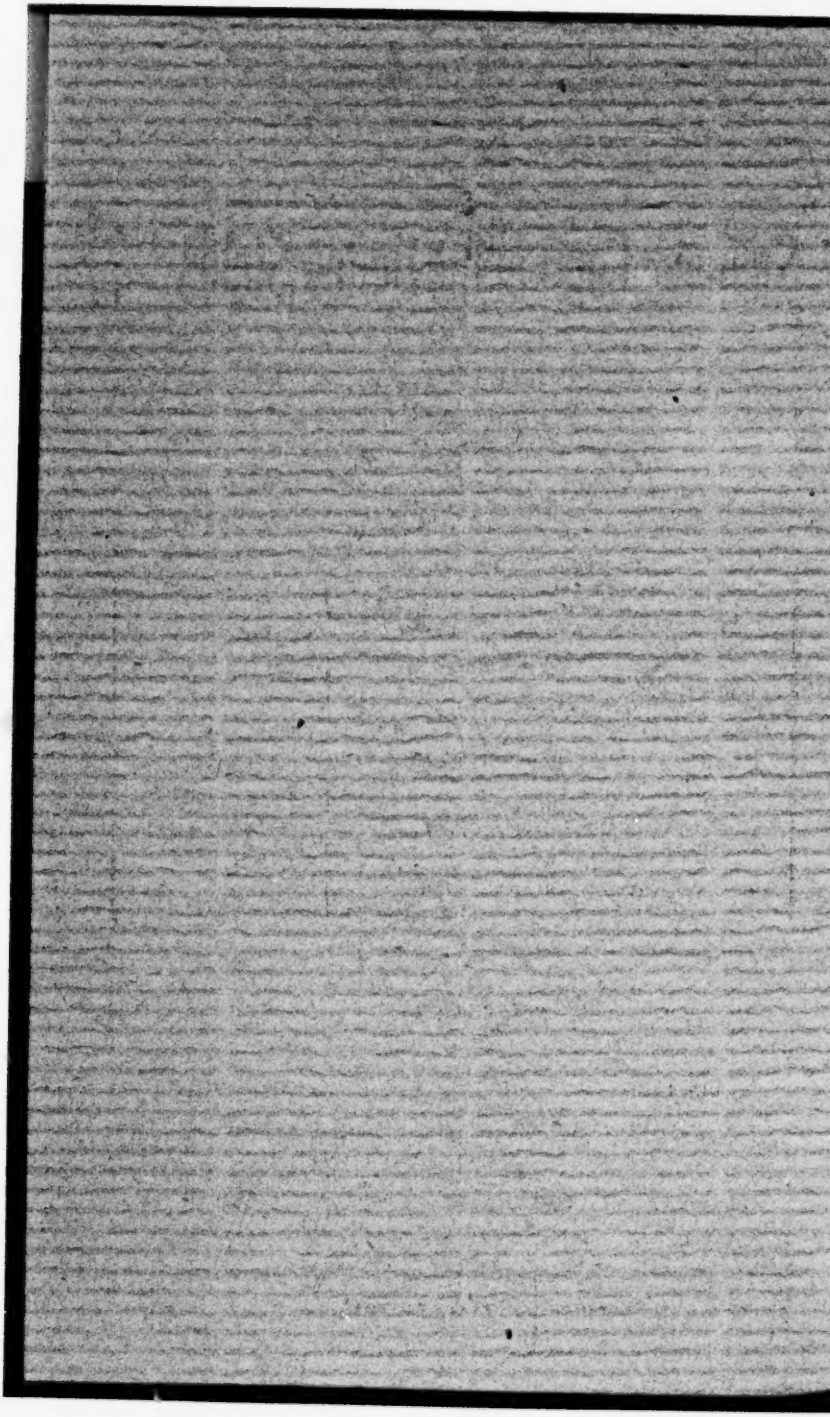

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The argument filed for the respondents, found on pages 3 to 10, inclusive, of their brief, assumes the point in issue. It is there stated that no appeal lies

to this court in these cases, because the court below had jurisdiction of the parties and of the *subject matter* of litigation, and that if any error was committed it was error on the merits which cannot be considered here.

The only point insisted upon by appellants is that the lower court did not have jurisdiction of the *subject matter* of the litigation. The method of discussion pursued does not alter this fact. The argument made under subdivision 2, pages 22 to 38 of our original brief, is intended to show that, owing to the circumstances attendant upon the transactions set out in the amended libels, no right of action *in rem or in personam* arose in favor of the libellants of which a court of admiralty could take cognizance. The ultimate reason, as explained on pages 37 and 38 of the brief mentioned, is because the contracts pleaded are not maritime contracts.

And the argument made under subdivision 3, pages 38 to 52 of our former brief, is designed to show that the matters alleged in the amended libels have passed to final judgment and cannot form the *subject matter* of litigation in a court of admiralty or any other court.

We entirely agree with the authorities quoted in the opposing brief defining the meaning of the term jurisdiction. It is the "power to hear and determine the subject-matter in controversy between parties to a suit." We also agree in the statement there made that "if the law confers the power to render a judgment

or decree, then the court had jurisdiction; what shall be adjudged or decreed between the parties, and with which is the right of the case; is judicial action, by hearing and determining it."

The first question confronting every court in every case, and one which it must determine before examining into the merits, or proceeding to decide "with which party is the right of the case," is whether the court has jurisdiction of the subject-matter of litigation, and then whether it has jurisdiction of the parties thereto. If it has not jurisdiction of the subject-matter, it cannot proceed further, even though the parties are in court willing to proceed. "The question of the true limits of maritime law and admiralty jurisdiction is exclusively a judicial question."

The Lottawanna, 21 Wall. 558, 572.

The Scotland, 105 U. S. 24.

It is held in Taylor v. Carryl, 20 How. 583, 599, 600, that the reasonable interpretation of the constitution "would seem to be that it conferred on the national judiciary the admiralty and maritime jurisdiction exactly according to the nature and extent and modifications in which it existed in the jurisprudence of the common law." To the same effect, see

The Scotland, 105 U. S. 24.

The Lottawanna, 21 Wall. 558.

Receiverships were unknown at common law. A receiver's contract has never, until the decision of the lower court, been held to be a maritime contract. So the question here is, whether the rules of equity govern the contracts mentioned in the amended libels, or whether they are governed by admiralty rules. If the rules of equity control, the contracts are equitable. If the rules of admiralty control, the contracts are maritime. If the first is held to be the law, the lower court had no jurisdiction. If the latter is held, it did have. Certainly this is purely and distinctively a question of jurisdiction over the subject-matter. The lower court decided in favor of the admiralty jurisdiction. It held the contracts maritime. We appeal from the decision and ask the judgment of this court upon the correctness of the ruling below. It is held in Insurance Co. v. Dunham, 11 Wall. 31, that "perhaps the best criterion of the maritime character of a contract is the system of law from which it arises and by which it is governed."

And it is held that "there is no jurisdiction in admiralty to foreclose a mortgage of a vessel by a sale, or by transfer of the possession to the mortgagee."

The John Jay, 17 How. 399.

The District Court of the United States, sitting in admiralty, has no jurisdiction of a contract of partnership for the use of a vessel put into a line for carrying passengers and freight. The contract arranged the contributions which each party was to make and the

share of profits to be received; and though one of the parties furnished the vessel, the contract was not a charter party.

Ward v. Thompson, 22 How. 330.

"This court reasserts the doctrine that the circuit court, sitting in an admiralty court, has no jurisdiction to foreclose or give other remedy on a mortgage."

Schuchardt v. Babbidge et al., 19 How. 239.

"The principal question is, whether the case made is within the admiralty jurisdiction. That it would not be within the admiralty jurisdiction in England is clear. In general, contracts upon land, though to be executed upon the sea, and contracts at sea, if to be executed on the land, are not cognizable by the English admiralty. There are some exceptions to this rule in that country; but none, it is believed, which affect the question now before us. There are conflicting decisions as to the admiralty jurisdiction in England, and also in this country. It may be difficult, if not impracticable, to state with precision the line of this jurisdiction, but we may approximate it by consulting the decisions of our own courts.

"In the case of Willard v. Dorr, 3 Mason, 91, it was held, 'no suit for services performed by the master, as a factor, or in any other character than that of master, is cognizable in the admiralty.' And again, in Plummer v. Will, 4 Mason C. R. 380, it was said, 'a contract

of a special nature is not cognizable in the admiralty, merely because the consideration of the contract is maritime. The whole contract must, in its essence, be maritime, or for compensation for maritime service.' In 11 Peters, the Steamboat Orleans v. Phoebus, it was said the admiralty has no jurisdiction in matters of account between part owners. And, further, 'the jurisdiction of courts of admiralty, in case of part owners, having unequal interests and shares, is not, and never has been, applied to direct a sale upon any dispute between them as to the trade and navigation of the ship engaged in maritime voyages, properly so called.' (Ib.)

"The jurisdiction of courts of admiralty is limited, in matters of contract, to those, and to those only, which are maritime. (Ib.)

"An agreement by the master of a vessel to pay wages may be sued upon in the admiralty; but a stipulation in the same contract to pay a sum of money in case the voyage should be altered or discontinued, can be enforced only at common law. (L. Arira v. Manwaring, Bee's Rep. 199.) The admiralty jurisdiction of the District Courts of the United States, being exclusive, cannot be extended to cases of law or equity, cognizable by the circuit and state courts, under the 11th section of the judiciary act. (1 Baldwin, 554.)"

Grant et al. v. Poillon, 20 H. 162.

Numerous cases have been brought in the admiralty courts of this country in which the contracts relied upon have been adjudged not to be maritime, and the

jurisdiction has been consequently denied. And the questions thus raised have always been regarded as jurisdictional. They cannot be treated in any other way.

Opposing counsel seems to think that because the vessels were within the territorial jurisdiction of the district court; because they were seized, and because the claimants appeared, the lower court had jurisdiction, and could proceed to hear the case upon the merits. He seems to also think that any ruling thereafter made by the court was a decision upon the merits. And it is argued that this is true because the court, in rendering a decision, must take into consideration the facts appearing. Nothing could be more fallacious. Any one might file a pleading in any kind of a case, and a marshal might seize any kind of personal property, but the fact of the filing of the pleading called a libel, and the fact of the seizure, would not give the court jurisdiction over the cause. The court would have to determine whether the subject-matter of the litigation was maritime. This would depend upon the nature of the contract sued on. If a person should attempt to libel a vessel to foreclose a contract of mortgage of the kind mentioned in the case of the John Jay, *supra*, and the marshal should seize her, these facts would not give the court any right to either hear or determine the controversy. And if it did assume to hear and determine it, an appeal would lie to this court upon the question of the power of the lower court to take cognizance of the cause, and the judgment rendered below would be declared void.

Counsel seems to suppose that, because it is sometimes necessary to consider facts in order to reach a conclusion whether a controversy is within the maritime jurisdiction, the decision of the point is always upon the merits. This is not so. It makes no difference at what stage of the proceeding, whether during the taking of testimony or otherwise, the defect of jurisdiction appears, or how it may arise, it is the duty of the court to at once cease all further cognizance of the cause.

2 Conkling's U. S. Admir. (2d Ed., Rev.), p. 229.

The Maggie Hammond, 9 Wall. 435.

It is stated, on page 4 of the opposing brief, that at the time of the seizures "The Resolute" and "The Three Sisters" were within the district of Oregon, and were lawfully seized by the marshal of the court below. In this statement, as in every other statement in this portion of his brief, counsel has assumed in his favor the question to be decided upon these appeals. Our position is that, while in a sense the seizure was lawful, at the same time it was not rightful. If the court had no jurisdiction of the subject-matter of the action, there was no power to seize, and the seizure having been made, upon a showing that the subject-matter of the action was not within the cognizance of the court, the custody of the marshal should have been released. Mere seizure could not give jurisdiction unless, as before stated, there existed a right to seize. If it is to be decided that admiralty has jurisdiction of any prop-

erty which is capable of physical seizure, or that the jurisdiction of the court proceeds from the fact that the thing was seized, it seems to us that the jurisdiction of admiralty is limited only by the various kinds of personal property capable of manual possession. In every case of a seizure, the question of the validity and the rightfulness of the seizure is one to be determined upon an examination of the libels under which the seizure was made. If the libels disclose the fact, as we claim in these cases they do, that the contracts are not maritime, or, in other words, that the subject-matter of the litigation is not within the jurisdiction of admiralty, the seizure must be adjudged to be irregular and one which cannot be maintained. For this reason we say that the claim made for the libellants, on page 4 of the brief, "that the court below therefore had jurisdiction of the parties and of the subject-matter of the action. It therefore had a right to decide the questions presented by the exceptions to the libels," is incorrect. The statement that the court below had jurisdiction over the subject-matter assumes the identical question in dispute. If the court had jurisdiction over the subject-matter, as shown by the allegations of the amended libels, it had power to seize the vessels and had power to determine all the controversies. If, however, the lower court did not have jurisdiction over the subject-matter, then it had no power to do any of these things, and that is precisely the point upon which we seek the determination of this court. It is purely jurisdictional, and this court is the only one to which we could have appealed.

On page 10 of the opposing brief, it is said, in reference to the argument in the original brief filed by us, and commencing on page 38 thereof: "This point is equivalent to a plea of prior adjudication." A comparison of the original libels with the amended libels will show that the allegations that "all the property in charge of the receiver of the state court, including the vessels libeled," were sold under the order of the court, were not contained in the original libels, but were inserted in the amended libels. With these amendments it became unnecessary to file exceptive allegations. The amended libels upon their face show all the facts, and made it possible to try these cases upon exceptions thereto. These exceptions are not intended to be the equivalent of a plea of prior adjudication, but are designed to raise a question of law as to the jurisdiction of the court over the subject-matter, upon the facts as shown by the amended libels and admitted by the exceptions.

This remarkable statement is made on page 10 of the brief: "Certainly any court in which such a plea was presented has undoubted jurisdiction to hear such plea and decide thereon. If this be not so, then it would only be necessary to set up a plea of prior adjudication, and then insist that the court was without jurdiction to hear it. According to appellants' argument, the court would be without jurisdiction to hear the plea, and such plea would therefore have to remain forever undecided." This is a peculiar deduction from the arguments made in the original brief, and is certainly

not justified by anything therein contained. Our contention, as we have before stated, is that a court must, whenever the question is raised, and at whatever stage of the proceeding it occurs, decide upon its own jurisdiction. It matters not whether this point is raised by a plea of prior adjudication, whether it is raised by a demurrer, or by exceptions, as in these cases, when the facts appear and are admitted, or whether it is raised during the course of the taking of testimony. The court must at once address itself to a determination of the point, and whatever may be its decision, under the act of 1891, this court is the only court to which an appeal may be taken.

It is stated, on page 2 of counsel's brief, that "on pages 25 and 49 of the appellant's brief, a statement is made that the vessels libeled were sold with other property for the benefit of the respondents, and that the respondents have received a portion of the proceeds of the sale. No such fact is stated anywhere in the record, and the statement is without foundation in fact." It is true that it is nowhere stated in the amended libels that the respondents received a proportion of the moneys arising from the sale of this property, but the amended libels show that all of this property, including the libeled vessels, was sold under the final decree of the equity court, in a proceeding the nature of which is disclosed. Our position in this regard is that it is the duty, under the undisputed law, of an equity court, in making final disposition of property which has been operated by it through a receiver, to provide in its

decree, first for the payment of the operating expenses incurred by the receiver. In case of a failure to make this provision, a decree would contain error, and this error could only be corrected upon direct appeal in the cause in which the decree was entered. We have assumed in our former argument, and we think we have a right to assume, that the decree of the court of equity was rendered in conformity to the law, and did make the provision for the distribution of these funds as stated in the brief. The correctness of that decree cannot be questioned here. However, it makes no difference for the purposes of our argument whether the libellants accepted their pro rata or whether they declined it. If they accepted it, they are entitled to no more; and if they declined it, that fact would not give admiralty jurisdiction over the subject-matter of this litigation.

It is not necessary to consider all of the arguments contained in the portion of the brief referred to. The same error prevails throughout. Counsel has assumed that it is conceded that the lower court had jurisdiction of the subject-matter. No such concession is made. That is the question we claim a right to have decided here.

Objection is made to the form of the certificate of the trial court, for the reason that "no question concerning the jurisdiction of the District Court of the United States for the District of Oregon over said cause has been certified to this court from the said district court for decision."

Further objection is made "that no question concerning the jurisdiction of the District Court of the United States for the District of Oregon over said cause has alone been certified to this court from the said court for decision, but, on the contrary, the matter undertaken to be certified to this court by the said district court involves questions not relating to the jurisdiction of said district court over this cause."

Some argument is presented in our original brief, pages 14 to 22 inclusive, touching the right to and form of appeal, which we request the court to consider in connection with the statements now to be made.

The portion of the federal statute governing the method of appealing to this court from a decision of a district or circuit court of the United States is as follows:

"In any case in which the jurisdiction of the court is in issue; in such cases the question of jurisdiction alone shall be certified to the supreme court from the court below for decision."

Sup. to Rev. Stat. 1874-1891, p. 903, sec. 5.

The following is the form of the appeal in all of these cases:

"The above-named claimants, * * * conceiving themselves aggrieved by the final judgment rendered herein on the * * * day of * * * 1895, in the above-entitled proceedings, do hereby appeal from

the said final judgment to the Supreme Court of the United States, and they pray that this, their appeal, may be allowed, and that the question of the jurisdiction of the above-entitled court to render said judgment be certified to the Supreme Court of the United States, and that a transcript of the record and proceedings and papers upon which said judgment was made, duly authenticated, may be sent to the Supreme Court of the United States." Subsequent to the filing of this petition for an appeal, the claimants filed their assignment of errors in the district court. The district court, in the order allowing the appeal, made the following certificate:

"Be it remembered that on this day in the above-entitled cause came Wm. T. Muir, of proctors for claimants, and filed herein his assignment of errors, and petition for an allowance of an appeal herein to the Supreme Court of the United States from the decree herein rendered on * * * 1895, which decree is as follows, to-wit: (Here follows copy of the decree.) And in open court the said claimants, by their said proctors, prayed that said appeal be allowed, and tendered a bond with sufficient surety to the approval of the court, which bond is hereby approved, to stay proceedings herein until said appeal shall have been determined, and thereupon the court hereby allows said appeal and approves said bond, and execution is hereby stayed until the determination of said appeal. And this court does hereby certify and make known unto the Supreme Court of the United States that the *only*

question arising upon said appeal is the *question* as to whether or not, under the facts stated in the amended libel and the exceptions thereto, this court acquired or had jurisdiction to hear or pronounce the said decree, and that the following is a copy of the said amended libel and the exceptions thereto. (Here follows copy of the amended libel and the exceptions.)" This allowance of appeal and certificate was signed by the judge of the court below.

As we understand it, a certificate of the trial court is necessary, under the act of 1891, to give this court jurisdiction in any case. Maynard v. Hecht, 151 U. S. 324. This jurisdictional prerequisite is certainly met by the certificate above referred to. The remaining question is whether the certificate is in proper form. A number of decisions have been rendered by this court upon objections raised as to the form of the certificate. We have found no case where there was a certificate satisfying this jurisdictional prerequisite, in which this court has held that the form of the certificate as a matter of practice was insufficient; on the contrary, whenever the certificate has been made by the trial court, this court has held that it had jurisdiction to determine the jurisdictional question certified.

The form and character of the certificate is a question of practice. It is not prescribed by the statute, and this court has not announced a rule covering the point, nor defined precisely how the certificate should be framed. Taken together, the petition for an appeal,

the allowance of the appeal, and the certificate of the judge, are equivalent to a statement by the lower court to this court that "these (referring to and copying the amended libels) are the undisputed facts; that the question raised on these appeals is whether, under these undisputed facts, a court of admiralty had jurisdiction to hear and determine the cause." It seems to us that no more satisfactory course could have been pursued. It was not necessary for the court below to state in its certificate that the question was whether a court of admiralty had jurisdiction to enforce a receiver's contract, and to state specially the other matters necessary to a clear comprehension of the particular character of the contracts and the claims made thereunder, because all of these facts appear as clearly and as briefly from the facts certified to this court as they could have been made to appear by a certificate of the court reciting, independently of the amended libels, the facts stated therein. We submit that the amended libels do not state any fact not necessary for the consideration of the court in the determination of this controversy, and that the judge of the court below could not have stated these facts more clearly or in shorter compass than they are stated in the certificate. We are inclined to the belief that if any of the facts stated in the amended libels had been omitted from the certificate of the judge or the record sent up, counsel on the other side would have had some reason for complaint, on the ground that the true nature of the controversy was not disclosed by the record forwarded to this court.

The lower court, in its opinion, asks and decides this question (see p. 744, 69 Federal Reporter): "Does the fact that the wages are earned in an employment by a receiver take the case out of the general rule which confers jurisdiction upon the admiralty courts for any reason?" This expression of the lower court in its opinion, which is certified to this court, shows the nature of the jurisdictional question decided by that court. The argument and the reasoning of the court does not affect the character of the question which was before it. In Shields v. Coleman, 157 U. S. 168, and in Smith v. McKay, 161 U. S. 355, 357, the lower court certified to this court the portions of the record necessary to be considered on the appeals, and this court held that that was a proper method of stating the question of jurisdiction. This course was pursued in these cases. The certificates state that the appeals were taken *only* on the *question* of jurisdiction. The precise question in each case plainly appears from the certificates to be, whether the contracts alleged in the amended libels were maritime contracts, and, in consequence, whether the lower court had jurisdiction over the subject-matter of the controversy.

The objection raised, that no question concerning the jurisdiction of the district court over said cause has *alone* been certified to this court is met by the terms of the certificate itself. The lower court, as shown above, in its certificate has said:

"This court does hereby certify and make known unto the Supreme Court of the United States that the *only question* arising upon said appeal is the question as to

whether or not, under the facts stated in the amended libel and in the exceptions thereto, this court acquired or had jurisdiction to hear or pronounce the said decree."

It would seem, therefore, that no genuine fault can be found with the form of the certificate, nor can it be successfully contended that the court below has assumed to make a broader certificate to this court than authorized by the statute above quoted. It is stated in the original brief that the last two questions discussed therein may not be considered jurisdictional questions. The argument upon the appeals must not, however, be confounded with the appeals themselves, nor with the certificate of the question to be decided. It appears plainly, from the undisputed facts certified, that the only question certified is whether the contracts alleged in the amended libels are maritime contracts. The last two questions were discussed, as stated in the brief, because there are conflicting decisions of the federal courts upon the points, and it was thought, in the interest of harmony of decision, they should be finally determined by the court of last resort. The appeals have been properly taken, and the jurisdictional question has been duly certified. The validity of the appeals cannot be affected by any argument made extending to questions which may not be considered jurisdictional ones. The argument will not be considered.

Respectfully submitted,

WILLIAM T. MUIR,
Of Proctors for Claimants.

JOHN W. WHALLEY and
WILLIAM T. MUIR,
Proctors for Claimants.

Portland, Or., Oct. 23, 1897.

Nos. 135, 136 and 138.

FILED
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JAMES H. McKEN

Brief of Cox for Appellees

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1897.

Filed Nov. 1, 1897.

THE STEAMTUG "RESOLUTE," A. B. HAMMOND and E. L. BONNER,
Claimants and Appellants,
v.
HENRY E. WILSON, SIDNEY G. WOLFKILL, THOMAS NELSON and CHARLES JAHN, *Libelants and Respondents.*
No. 16,200.

THE STEAMTUG "RESOLUTE," A. B. HAMMOND and E. L. BONNER,
Claimants and Appellants,
v.
GEORGE DOWSETT,
Libelant and Respondent.
No. 16,199.

THE STEAMER "THREE SISTERS," THE OREGON CENTRAL AND EASTERN RAILROAD CO.,
Claimants and Appellants,
v.
R. J. YOUNG, M. BELL, C. A. BELL, H. ROBERTSON, W. HOWELL, W. H. SUTTON, et al.,
Libelants and Respondents.
No. 16,202.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF OREGON.

BRIEF FOR RESPONDENTS.

L. B. COX, W. W. COTTON,
THOMAS O'DAY and C. F. LORD,
Proctors for Respondents.

F. W. BALTES AND COMPANY PRINTERS, PORTLAND, OREGON.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1897.

THE STEAMTUG "RESOLUTE," A. B. HAMMOND and E. L. BONNER, *Claimants and Appellants,* v. HENRY E. WILSON, SIDNEY G. WOLFKILL, THOMAS NELSON and CHARLES JAHN, *Libelants and Respondents.*	No. 16,200.
THE STEAMTUG "RESOLUTE," A. B. HAMMOND and E. L. BONNER, *Claimants and Appellants,* v. GEORGE DOWSETT, *Libelant and Respondent.*	No. 16,199.
THE STEAMER "THREE SISTERS," THE OREGON CENTRAL AND EASTERN RAILROAD CO., *Claimants and Appellants,* v. R. J. YOUNG, M. BELL, C. A. BELL, H. ROBERTSON, W. HOWELL, W. H. SUTTON, et al., *Libelants and Respondents.*	No. 16,202.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF OREGON.

BRIEF FOR RESPONDENTS.

STATEMENT OF THE CASE.

The principal questions to be decided on these appeals are common to the three cases above entitled, and it has therefore been stipulated that only one brief need be filed by the parties, but that each case shall be decided as if briefs had been filed therein.

The questions presented arise upon exceptions to the libels filed in the District Court of the United States for the District of Oregon. The exceptions were overruled; and the appellants in each case expressly waiving the right to plead further, decrees were entered in each case in favor of the libelants. (Transcripts of record, Three Sisters, pp. 20, 21; Wilson, p. 19; Dowsett, p. 25.) From the decrees so entered, the appellants perfected an appeal to this court and prayed that the question of the jurisdiction of the District Court to render the decrees be certified to this court.

The appeals were allowed, and in the allowance of the appeal the District Court certified in each case as follows: "And this court does hereby certify and make known unto the Supreme Court of the United States that the only question arising upon said appeal is the question as to whether or not, under the facts stated in the amended libel and the exceptions thereto, the court acquired or had jurisdiction to hear and pronounce said decree." (Transcripts of record, Wilson, p. 25; Dowsett, p. 30; Three Sisters, p. 27.) The only question, therefore, presented, and indeed the only question which could be presented to this court for decision, is whether or not the court below had jurisdiction to hear the questions raised by the exceptions to the amended libel and to pronounce any decree thereon.

The facts in the cases are in the main correctly stated in the brief of the appellants and will not be restated here. No reference, however, is made in the appellants' briefs to the facts appearing in each case that the boat against which relief was sought was lawfully seized within the district of Oregon, and that the appellants appeared and claimed the boat and filed their stipulation to pay any decree which might be entered. No question was or could have been raised in the court below as to the jurisdiction of the court below over the *res* or over the appellants. The only question which can therefore be presented to this court on this appeal is whether the court below had jurisdiction of the subject-matter of the action.

There is one statement of fact made in appellants' brief which needs correction. On pages 25 and 49 of the appellants' brief, the statement is made that the vessels libeled were sold with other property for the benefit of the respondents and that respondents have received a portion of the proceeds of the sale. No such fact is stated anywhere in the record, and the statement is without any foundation in fact. On the contrary, the amended libels each allege that the

money claimed by each respondent is due and owing to him, and such allegations are admitted by the exceptions.

Throughout the brief of the appellants, and particularly in the point commencing on page 38 thereof, it would seem to be insisted that the exceptions to the amended libels contain something equivalent to a plea of prior adjudication. No such exception to the libels was ever made, and the libels themselves show that the sale referred to in appellants' brief was not a sale made for the benefit of the respondents as a result of any proceeding instituted by the respondents; but was a sale made under a decree foreclosing a mortgage made by the Oregon Pacific Railroad Company to the Farmers' Loan and Trust Company prior to the time that the services of the respondents were performed. It further appears from the amended libels that at the time of the sale under the said decree, the appellants were notified that the vessels sold were subject to liens in favor of the respondents, and that the appellants bought with notice of such liens and subject thereto. (Transcripts of record, Wilson, p. 17; Dowsett, p. 22; Three Sisters, p. 17.)

ARGUMENT.

I.

The court below had jurisdiction and its decrees should be affirmed.

These appeals are taken directly to this court under the fifth section of the act of congress approved April 5, 1891, upon the ground that the jurisdiction of the District Court is in issue. The only question arising or which can arise upon the appeal is that certified by the District Court, namely, "whether or not under the facts stated in the amended libel and the exceptions thereto this court acquired or had jurisdiction to hear or pronounce the said decree." (Transcripts of record, Wilson, p. 26; Dowsett, p. 31; Young, p. 30.)

In the case of Rhode Island v. Massachusetts, 12 Pet. 718, Justice Baldwin, speaking for this court, defined jurisdiction as follows: "Jurisdiction is the power to hear and determine the subject-matter in controversy between parties to a suit, to adjudicate or exercise any judicial power over them; the question is, whether on the case before a court, their action is judicial or extra-judicial; with or without the authority of law, to render a judgment or decree upon the rights of the litigant parties. If the law confers the power to render a

judgment or decree, then the court has jurisdiction; what shall be adjudged or decreed between the parties, and with which is the right of the case, is judicial action, by hearing and determining it."

In Black on Judgments, Vol. I, Sec. 215, it is said: "In order to the validity of a judgment, the court must have jurisdiction of the persons, of the subject-matter, and of the particular question which it assumes to decide. It cannot act upon persons who are not legally before it, upon one who is not a party to the suit, upon a plaintiff who has not invoked its arbitrament, or upon a defendant who has never been notified of the proceeding. It cannot adjudicate upon a subject which does not fall within its province as defined or limited by law. Neither can it go beyond the issues and pass upon a matter which the parties neither submitted nor intended to submit for its determination."

At the time of the seizures, the Resolute and the Three Sisters were within the district of Oregon and were lawfully seized by the marshal of the court below. As a result of such seizure, the appellants appeared in the three cases, gave their bond and obtained the release of the vessels. (Transcripts of record, Dowsett, p. 7; Wilson, p. 5; Three Sisters, p. 6.) The court below therefore had jurisdiction of the persons and of the res.

The libels presented questions coming within the admiralty jurisdiction, and the court below therefore had jurisdiction over the subject-matter. In ex parte Gordan, 104 U. S. 516, this court said:

"The judicial power of the United States extends to 'all cases of admiralty and maritime jurisdiction' (Const., Art. 3, Sec. 2); and congress, by Sec. 563, Subd. 8, of the Revised Statutes, committed the exercise of this power in most cases primarily to the District Courts. Admiralty jurisdiction extends to maritime contracts and service, and to torts or injuries of a civil nature, committed on navigable waters. (The Belfast, 7 Wall. 624.) The District Courts have the power to hear and decide all cases arising under this jurisdiction, and when a prohibition is applied for, the question presented is not whether a libelant can recover in the suit he has begun, but whether he can go into a court of admiralty to have his rights determined."

The court below therefore had jurisdiction of the parties and of the subject-matter of the action. It therefore had a right to decide the questions presented by the exceptions to the libels. It had the vessels within its custody, and

therefore had power to enforce any decree against the thing which it might render. If it rendered an incorrect judgment upon the questions presented, its error in this regard would not affect its jurisdiction.

As stated by Mr. Justice Story in ex parte Watkins, 7 Pet. 572, "the jurisdiction of the court can never depend upon its decision upon the merits of a case brought before it; but upon its right to hear and decide it at all."

The question under consideration has been presented to this court and to the Circuit Court of Appeals for the Ninth Circuit, and in each case it has been held that the jurisdiction of the court below was not in issue within the meaning of the act of 1891, when the court below had jurisdiction of the subject-matter and of the parties.

In Smith v. McKay, 161 U. S. 356, an appeal was taken to this court, under the act of 1891, on the ground that the cause was one in which the jurisdiction of the court below was in issue; and the appellants sought to have this court review the action of the Circuit Court in entertaining the jurisdiction of the bill in equity in a case in which, as the appellants alleged, it appeared that the complainant had a plain, adequate and complete remedy at law. This court held that no question of jurisdiction was presented; and upon this subject said (p. 358):

"When the requisite citizenship of the parties appears, and the subject-matter is such that the Circuit Court is competent to deal with it, the jurisdiction of that court attaches, and whether the court should sustain the complainant's prayer for equitable relief, or should dismiss the bill with leave to bring an action at law, either would be a valid exercise of jurisdiction. If any error were committed in the exercise of such jurisdiction, it could only be remedied by an appeal to the Circuit Court of Appeals."

In Schunk v. Moline, Milburn & Stoddard Co., 147 U. S. 500, the Moline company commenced a suit against Schunk in the Circuit Court of the United States for the District of Nebraska, on several notes, some of which, amounting to $530.09, were past due, while others, amounting to $1,600.64, were not then due. Under the provisions of the state statutes authorizing the issuance of an attachment in certain cases on a claim before it is due, an attachment was issued against the property of the defendant. It was claimed by the defendant (p. 506) that a plaintiff in a federal court could not avail himself of the right given by a state statute to attach for a claim not yet due; that state statutes can

confer no jurisdiction on the federal courts; and that, therefore, the Circuit Court had no jurisdiction to issue the attachment in the case. It was held, however, that the court having jurisdiction of the subject-matter and of the parties had a right to hear and determine in the exercise of such jurisdiction whether the plaintiff was entitled to the extraordinary relief by way of attachment; and that if it be conceded that it erred in granting such relief, it would simply be a matter of error and not one of jurisdiction.

In Laidlaw v. Oregon Railway & Navigation Company, 81 Fed. Rep. 876, a libel in rem was filed in the District Court for Oregon, to recover damages for the death of the libelant's intestate. The libel was based upon a local statute of Oregon which required that the action should be commenced within two years after death. Exceptions were filed to the libel on the ground that the proceeding was not instituted within the time limited by the state statute, and that therefore the libelant under the decision in The Harrisburg, 119 U. S. 199, had not brought himself within the statute, and therefore, under the decision in the case of The Corsair, 145 U. S. 335, there was no lien and the court was without jurisdiction. This exception was sustained, and from the decree dismissing the libel the libelant appealed to the Circuit Court of Appeals. A motion was made to dismiss the appeal, on the ground that the only question in issue was the jurisdiction of the District Court. This motion was denied on the ground that the subject-matter was within the admiralty jurisdiction of the court and there was no doubt about the jurisdiction of the court over the parties and over the res.

In the present case, the subject-matter of the action was within the jurisdiction of the court below, and the res was lawfully within its custody. This being so, the question raised by this appeal as to the jurisdiction of the court below must be decided in favor of the respondents, and decree appealed from be affirmed.

II.

The questions argued in appellants' brief are not jurisdictional.

Appellants' brief does not discuss any question involving the jurisdiction of the parties or of the subject-matter of the action; but states, on page 13 of the brief, four questions which are claimed to be jurisdictional and therefore presented by this appeal. These four questions, in the language of appellants' brief, are the following:

"First—That the incidents of a receiver's contract attached to the contracts of employment, and no admiralty liens arose therefrom.

"Second—Regardless of the decision of this point, we contend that the matters have been thoroughly and finally determined by the decree of the court of equity, and cannot be re-examined in any court.

"Third—That the amended libels show that the statute of limitations has barred those claims which are based on the Oregon statutes.

"Fourth—That the claim assigned was, by reason of the assignment, divested of an admiralty lien, and, in consequence, a court of admiralty has no jurisdiction to enforce its payment by a proceeding in rem."

The questions stated by the appellants are restated on pages 14 and 15 of their brief, and practically amount to the following, namely:

First—Did the employment of the respondents by the receiver of the Oregon Pacific Railroad Company under the facts shown by the libels give rise to a maritime lien enforceable in admiralty by a proceeding in rem?

Second—If the maritime lien arose, did the sale of the libeled vessels and other property of the Oregon Pacific Railroad Company by the Circuit Court of Benton county operate as an adjudication of the rights of the respondents which cannot be set aside or reviewed by a court in admiralty?

The very statement of the questions which the appellants seek to present to this court is a full and complete concession that the court below had jurisdiction and that the questions themselves are not questions involving the jurisdiction of the court. Take the first question: Did a maritime lien arise in favor of the respondents by virtue of their employment? What court has power to decide whether under any given state of facts a maritime lien arises? No court has this power in an original proceeding save one of the District Courts of the United States.

In re Fassett, 142 U. S. 479.
Ex parte Gordan, 104 U. S. 515.
Hein v. Trevor, 4 Wallace, 555.
The Belfast, 7 Wallace, 624.

The vessel was within the territorial jurisdiction of the District Court of the District of Oregon, and that court was therefore the only court which had the power to decide in an original proceeding whether under the facts stated in the

amended libel a maritime lien arose in favor of the respondents.

On page 14 of the appellants' brief it is stated that admiralty has no jurisdiction in rem to enforce a demand for seamen's wages or other obligation arising ex contractu unless the person instituting the proceeding is entitled to a maritime lien at the time the proceedings are brought. This statement is not correct. A court of admiralty having jurisdiction of the subject-matter and in custody of the res has jurisdiction in rem to enforce a demand whenever the court decides that the person instituting the proceeding is entitled to a maritime lien. Whether or not the facts give rise to a maritime lien is purely a question of fact going to the merits of each particular case, and any decree based upon this question of fact is one within the jurisdiction of the court and is one involving the merits alone; and when such decree is entered it can be enforced according to the forms of admiralty. Any error committed in this regard must be reviewed in the Circuit Court of Appeals.

After stating the proposition we have just examined, appellants then argue that because of certain facts in the present case no maritime lien arose in favor of the libelants, or if it did arise, such lien has been lost and therefore there is no maritime lien and the court was without jurisdiction. The proposition of the appellants is this: No facts creating a lien, no lien; no lien, no jurisdiction. If the argument of the appellants be followed to its legitimate conclusion, the result would be that in every proceeding in rem in admiralty an appeal could be taken to this court upon the disputed questions of fact raised in the court below, and this court would be called upon to consider such disputed questions of fact, on the ground that they raised issues as to the jurisdiction of the court below. Every maritime lien, whether arising out of contract or of tort, depends for its existence upon the proof or admission of certain facts. If a seaman renders no services, he has, of course, no lien upon the vessel, notwithstanding his allegation of services performed. The District Court, however, has undoubted jurisdiction to determine whether the services were or were not performed. According to the argument of the appellants, a decree of the District Court in favor of the seaman would present a question involving the jurisdiction of the court below; and this court would have to pass upon the disputed question of fact as to whether the services were performed; for, if the services were not performed, the seaman would

have no lien; and, according to appellants' argument, the court below would be without jurisdiction to enter the decree. In cases of collision, there is no lien unless the collision actually occurred or unless the vessel against which the lien is claimed was at fault. Whether the collision occurred or whether the vessel was at fault, are purely questions of fact going to the merits; and the court having jurisdiction of the subject-matter and custody of the vessel would have jurisdiction to enter a decree either for or against the lien. According to appellants' contention, however, the disputed questions of fact in every collision case would raise issues involving the jurisdiction of the court below. Similar illustrations will readily suggest themselves as to every proceeding in rem in admiralty. Are all of such questions to be passed upon by this court, on the ground that the jurisdiction of the court below is in issue?

So, a court of equity has no power to grant relief unless facts are established calling for the exercise of its equitable powers. Such facts do not put in issue the jurisdiction of the court below. This court has held that where a court of equity has jurisdiction of the subject-matter and of the parties, the granting or withholding of the relief is purely a question going to the merits, and not one involving the jurisdiction of the court; and any error committed in the decision of such question can only be reviewed by the Circuit Court of Appeals.

Smith v. McKay, 161 U. S. 355.

Under this decision, it follows that where a court of admiralty has jurisdiction of the subject-matter and has made a valid seizure of a vessel, it has jurisdiction, and its decree that a maritime lien does or does not arise from the facts established or admitted is purely a decision upon the merits, and the party aggrieved must appeal to the Circuit Court of Appeals.

Take the second question and assume that by virtue of the facts stated a maritime lien arose, what court alone had power to decide whether the proceedings in the state court had or could divest such maritime lien? If a maritime lien arose, the enforcement of such lien was within the exclusive jurisdiction of the District Court, and no action of any person whomsoever could transfer jurisdiction over such lien to the state court of Oregon; and no action of such state court could extinguish such lien.

Moran v. Sturgis, 154 U. S. 256, 285.

In the case last cited, this court said: "As has been seen, maritime liens are incumbrances on vessels by operation of law, and neither the death nor the insolvency of the owner can divest or extinguish them or transfer jurisdiction over them to courts for the settlement of the estates of decedents or insolvents, although for the purposes merely of such settlement these are the appropriate tribunals. In the orderly administration of justice the representatives of such estates should apply to the court which alone has cognizance to ascertain and enforce these exceptional interests in the thing itself, which accompany it wherever it goes and into whosesoever hands it comes, and which cannot be displaced by the action of other courts in invitum."

If no court other than a court of admiralty can displace a maritime lien when it has once arisen, surely a court of admiralty is the only court which has jurisdiction to hear and decide the claim that a maritime lien has been divested by a proceeding had in a state court in equity.

The second question stated is discussed at length in appellants' brief, commencing on page 38. This point is equivalent to a plea of prior adjudication. Certainly, any court in which such a plea was presented has undoubted jurisdiction to hear such plea and decide thereon. If this be not so, then it would only be necessary to set up a plea of prior adjudication and then insist that the court was without jurisdiction to hear it. According to appellants' argument, the court would be without jurisdiction to hear the plea, and such plea would therefore have to remain forever undecided. On the contrary, the court having jurisdiction to hear the plea, a decree of the court upon the plea whether it be right or wrong is clearly within its jurisdiction, and the decision of the court upon the plea does not involve in any way whatsoever the jurisdiction of the court.

We therefore insist that none of the questions discussed in appellants' brief are jurisdictional, and that therefore such questions cannot be examined on this appeal by this court. We further insist that an examination of the questions involving the merits show that the decrees below should be affirmed. The carefully prepared brief of the appellants would seem to justify an examination of the various propositions stated therein; and, without entering upon any extended discussion thereof, it will be our object to show that the various reasons assigned for reversing the decrees are unsound.

III.

Seamen employed by a receiver appointed to operate a vessel are entitled to a lien for wages.

Commencing on page 22 of the appellants' brief, the general objection is urged against all of the respondents that owing to the fact that they were employed by the receiver of the Oregon Pacific Railroad Company no lien for wages due arose in their favor. It is a fact admitted in all of the cases that the respondents were employed on the vessels libeled by a receiver appointed by the Circuit Court of the State of Oregon for the County of Benton, in the suit of the Farmers' Loan & Trust Company v. the Oregon Pacific Railroad Company, and that by the order of the court appointing the receiver the receiver was required, authorized and directed to continue the operation as a going concern of the railroad of the defendants in said suit and of the steamboat and steamship lines of the defendant operated in connection therewith, including the libeled vessels; and that the receiver during the course of such operation hired the said libelants to work on board of the libeled vessels.

The court appointing the receiver authorized him not simply to keep and preserve the property placed in his hands but to continue to operate the same as a going concern. The cases of Esteban de Antunano, 31 Fed. Rep. 920, Parker v. The Little Lacme, 43 Fed. Rep. 925, and The Augustine Kobbe, 37 Fed. Rep. 695, have no application to the present case. In each of those cases the officer in whose charge the vessel was placed was an officer whose duty it was to keep and preserve the vessel and not to operate the same. Two principles are stated by the cases mentioned, namely:

First. The sheriff or marshal in whose custody a vessel is placed for safe keeping has no right and authority as against the owner or as against the creditor seizing the vessel, to operate the same; and having no right to operate the vessel such officer could not by his act create any lien.

Second. That the owner of a vessel has no right while the vessel is in the custody of the sheriff or marshal for the benefit of a creditor to make contracts for the vessel so as to create liens which would be prior to the lien or claim sought to be enforced by the creditor who had placed the vessel in the hands of the marshal or sheriff.

If any other principle were adopted the sheriff or marshal placed in charge of a vessel for safe keeping could so burden the vessel with liens as to practically bar the claim of the

creditor for whose benefit the marshal or sheriff by his process was required to safely "keep" the vessel, and the owner of the vessel could while it was in custody so far burden it with liens as to practically prevent diligent creditors seizing the vessel from ever enforcing their claim with success.

For the purpose of showing the exact point decided in each case, the cases cited will be examined. In the case of The Augustine Kobbe, 37 Fed. Rep. 702, the facts are stated in the preceding case commencing on page 696. As will be noted on page 698, the vessel was sold and money paid into court and the contest arose as to priority among the various persons claiming liens. Martin, Taylor & Company were the charterers of the vessel for a voyage to commence at Mobile. The vessel was seized at Mobile on a claim for material furnished to her prior to the taking effect of the charter. It was held that after the seizure Martin, Taylor & Company could not obtain a lien for moneys advanced under the charter. The court expressly says that Martin, Taylor & Company were actually notified of the seizure and that thereby the contemplated voyage was broken up and abandoned, and as the claim (p. 702) was not necessarily for the due care and preservation of the vessel, it could not be recognized as a lien, and cited The Young America, 30 Fed. Rep. 790. In other words, the charterer and the owner could not after the seizure go on increasing the damages of the charterer as against the right and claim of a material man having a lien prior to both of them.

In the Esteban de Antunano, 31 Fed. Rep. 920, the vessel was placed in the hands of a sheriff whose duty it was, as stated on page 925, to look after and provide for the necessities and preservation of the ship, and the court held that the presumption was that the sheriff did his full duty in the premises. After the seizure, the crew remained on board of the vessel, and the passengers and crew consumed the provisions supplied for the voyage, and, when they ran short, various parties, the intervening libelants herein (as stated by the court, commencing at the bottom of page 921), ***at the instance of the master and without the order of the sheriff***, continued to furnish supplies to meet the alleged necessities of the officer and the crew. As a result of the suit in which the vessel was placed in the hands of a sheriff, the vessel was afterwards sold, but while the vessel was in the hands of the sheriff libels were filed in the District Court of the United States and the vessel was seized and released on bond. The court held, commencing at the bottom of page 924, that the contract with material men was

not made by any representative of the ship authorized to contract, and therefore there was no lien, and that the supposed necessities of the ship and her crew would warrant no person in interfering without the authority of the sheriff or of the court. In the present case, the receiver in all things represented the rights of the complainant, the Farmers' Loan & Trust Company, and the rights of the defendant, the Oregon Pacific Railroad Company, and had a right under the orders of the court to make contracts of all kinds whatsoever in relation to the operation of the boats, and actually made the contract in question by the authority of the court. Applying the converse of the reasoning in the cases cited, it is clear that a lien would and should exist.

In Parker v. The Little Acme, 43 Fed. Rep. 925, a sheriff by virtue of a writ of execution seized a steamboat and ran the boat a few days without the consent or knowledge of the owner. The case does not state whether the boat was sold, but apparently the boat would seem to have been discharged and have been returned to the owner. Reference is made to a Pennsylvania case showing the duties of sheriff to safely keep property, and the decision is that the sheriff had no authority to operate the boat and to undertake to charge the owner or the creditor with the expense of such operation. In other words, the sheriff had no right by virtue of his writ requiring him to safely "keep" the boat to enter into contracts concerning the operation and running of the boat.

On the argument in the court below, as will be seen by reference to the opinion of the court below found in the transcript of record in the Wilson case, page 12, the appellants relied among other cases upon The Young America, 30 Fed. Rep. 790, cited in the Augustine Kobbe, 37 Fed. Rep. 702, referred to. The case of The Young America states clearly the rule and the reasons therefor and the limitations which the court must necessarily place upon the rule itself, and is a clear and positive authority in favor of the respondents. In that case, a vessel was arrested in admiralty, and afterwards, by direction of the libelant's proctor, the vessel was allowed by the marshal to pursue her ordinary business as before. The court held that the delivery of the vessel to the owner by the marshal, though without authority, did not defeat the jurisdiction of the court, but that the vessel was subject to all liens arising as the result of its operation by the owner after the delivery by the marshal. Upon this subject the court said:

"Where a plaintiff, as in this case, obtains only a nominal arrest of a vessel and virtually directs that she be left to pur-

sue her ordinary business, with its attendant liabilities to other persons, in contract or in tort, he must be held to have waived the benefit of the custody of the court as a protection against other liens, and to be estopped from claiming, as against third persons, the exemptions that belong only to a vessel in actual custody. Otherwise, not only would third persons be misled and deceived, but ready means would be offered of running vessels without liability to any further liens at all. Such a practice would be a plain abuse of the process of the court. For these reasons I must hold the claims of the material men to be liens on the tug."

In the present case, the Farmers' Loan & Trust Company sought the receivership, and the defendant, the Oregon Pacific Railroad Company, acquiesced therein for the purpose of having the railroad and vessels operated as a going concern. The Farmers' Loan & Trust Company, for the benefit of itself and of the defendant, procured an order of the court requiring the receiver to continue the operation of the vessels and to hire the necessary employees. The receiver was not simply to keep the vessel, but he was required to operate it; and necessarily all the parties interested must be held to have waived any benefits which they might otherwise have derived as a result of the placing of the vessel in the custody of the receiver.

The case of Paxton v. Cunningham, 63 Fed. Rep. 132, decided by Mr. Justice Gray in the Circuit Court of Appeals of the First Circuit, holds that where a vessel is placed by a court in the hands of a receiver for operation, such vessel is subject to all of the ordinary incidents of operation, including liens arising as the result of torts committed by the vessel. Indeed, the adoption of any other rule would at once establish a privileged class of vessels whose operation would not give rise to maritime liens and which would be entirely withdrawn from the jurisdiction of courts in admiralty. The principle contended for by the appellants would enable the owners of vessels, through the aid of friendly creditors or mortgagees, to have receivers appointed of the vessels and the operation of the vessels continued without subjecting such vessel to maritime liens arising from operation of any kind whatever. Such a practice, as stated in The Young America, 30 Fed. Rep. 792, would be a plain abuse of the process of the court and a fraud upon persons injured by or dealing with the vessel.

In the present case, the Farmers' Loan & Trust Company, and the defendant, the Oregon Pacific Railroad Company, procured or consented to an order of the court that the

vessels against which the liens are sought to be enforced in the present proceedings should be operated, and the court so ordered. As a result of such consent and order, every principle of justice requires that the vessels when so operated should be subjected to maritime liens arising as the result of torts committed by or contracts made on behalf of the vessels. We think it should be further held, where a court appointing a receiver of a vessel has ordered that the vessel shall be operated, that the court has impliedly consented that the custody of the court during its receivership over the vessel is liable to be divested by seizures in admiralty courts to enforce liens arising as the result of such operation. Upon this question the opinion in Paxton v. Cunningham, 63 Fed. Rep. 132, is clear and convincing.

On page 23 of the appellants' brief cases are cited in support of the proposition that to sustain a maritime lien there must in all cases be a credit of the ship. All of the cases cited, with the exception of the Sirocco, 7 Fed. Rep. 599, arose out of supplies furnished to the vessel. A maritime lien in favor of seamen does not arise upon contract, but is given by the general maritime law whenever seamen are lawfully employed on board. The distinction between liens for supplies and liens for seamen's wages is clearly stated in The International, 30 Fed. Rep. 375, 376. In that case, after stating the rule applicable to claims for supplies, the court says (p. 376):

"This results, however, from the fact that in this country the general maritime law in reference to a lien for supplies has been only partially adopted, and that such a lien is admitted, not as the legal incident to the mere furnishing of supplies, but only upon special circumstances which it is incumbent upon the material man to prove as conditions of his lien,—such, for instance, as the absence of the vessel from her home port; the absence of her owner from the place where the supplies are furnished, or, if present, his agreement to the lien; the ship's necessity for supplies; and the necessity of a credit to the vessel to obtain them. There are no such conditions applicable to a seaman's lien for wages. Our maritime law, as respects wages, conforms to the general law of the seas, which gives a seaman a lien upon the ship for his wages, as Cleirac says, 'so long as a nail remains.' His service is rendered primarily to *the ship;* and, in the view of the maritime law, the ship is primarily liable. The lien arises, therefore, as the legal incident of his service. It does not depend upon contract (The Minerva, 1 Hagg. 352), but

is given by the general maritime law, whenever he is lawfully employed on board. Macl. Shipp. 248, 249."

The Sirocco, 7 Fed. Rep. 599, cited by the appellants on page 23, is the only case bearing upon the question of seamen's wages. In that case, it was expressly held that the presumption of the maritime law is that services performed by seamen on board a vessel are rendered upon the credit of the vessel and by that law seamen acquire a lien for their wages in all cases, unless it be made to appear that a waiver of the lien and an exclusively personal credit formed a part of the hiring. According to the appellants' own argument, no exclusively personal credit formed a part of the contract of the hiring of the respondents, for the reason that it is strenuously insisted, on page 28 of the appellants' brief, that no personal liability of any kind whatsoever on the part of the receiver arose as the result of the contract of employment of the respondents by the receiver. The case of the Sirocco, referred to by the appellants, clearly sustains the views of the respondents and is cited in the following cases in support of the proposition that a seaman's lien on the ship for his wages does not depend upon contract, but is fixed by law as an incident of his lawful employment on board, and could not be waived without the seaman's express consent.

The International, 30 Fed. Rep. 375, 377.
The L. L. Lamb, 31 Fed. Rep. 29, 32.
The Atlantic, 53 Fed. Rep. 607, 608.

In the International, *supra*, it was held that an express contract waiving the lien would be held void in admiralty unless there was some corresponding benefit to the seaman to sustain it, and reference is made to section 4,535 of the Revised Statutes. This section provides that "no seaman shall by any agreement, other than is provided by this title, forfeit his lien upon the ship or be deprived of any remedy for the recovery of his wages to which he would otherwise have been entitled." No express contract waiving the lien, and no contract of the character mentioned in section 4,535 of the Revised Statutes, is shown to have been made by any of the respondents, and no consideration was ever given to any of the respondents for the making of any contract, express or implied, waiving any liens upon the vessels arising as the result of the services performed by the respondents. The respondents performed services as seamen upon the vessels libeled, under a lawful contract of employment, and as a legal incident of such employment a lien upon the vessels arose in favor of the respondents.

The Sirocco, 7 Fed. Rep. 599.
The International, 30 Fed. Rep. 375.
The L. L. Lamb, 31 Fed. Rep. 29.
The Atlantic, 53 Fed. Rep. 607.

Instead of annexing a lien to the contract as an incident thereto, the claimants insist that as a result of the employment of the respondents by the receiver the respondents must be held to have waived their lien. Any such contention is an attempt to evade the provisions of section 4,535 of the Revised Statutes, already referred to, and this statute is in exact accordance with the principle of numerous decisions in the admiralty courts as respects the validity of stipulations in seamen's contracts waiving liens.

The International, 30 Fed. Rep. 377.

What right had the Farmers' Loan & Trust Company and the Oregon Pacific Railroad Company to place a vessel in the hands of a receiver appointed by a state court and continue the operation of such vessel for the benefit of the bondholders, and then insist that by such a course of action the parties to the suit have rendered ineffective section 4,535 of the Revises Statutes? Any such course of proceeding is practically a fraud upon the class of men whom it is the duty of an admiralty court to protect. A decision in favor of the appellants would simply be to say that the creditors and owners of a vessel can, by placing it in the hands of a receiver, continue to operate the vessel for their own benefit and without subjecting the vessel to the admiralty jurisdiction of the United States courts, and without being subject to the paramount law of the land and to the statutes enacted by congress prohibiting the waiving of seamen's liens.

On pages 30 and 31 of the brief for the appellants, it is insisted that no lien can arise out of any employment unless at the same time there arises a personal right of action, and that in the present case there is no personal right of action against the receiver, and therefore there can be no lien. The rspondents were lawfully employed on board the vessel seized, and as a result of such employment, under the cases cited, a lien arose as a legal incident of the employment. The receiver, it is true, would not be liable in his individual capacity, on account of contracts lawfully made by him as receiver, but nevertheless the receiver in his official capacity would be so liable, and any judgment recovered against him would be payable out of the funds in his hands as such receiver. Trustees, assignees for the benefit of creditors, executors and administrators do not, by contracts lawfully made in their representative capacity, subject themselves to personal liability,

and any judgment recovered as the result of such contract must be satisfied out of the funds held by such persons in their respective capacity. The personal-liability argument made by the appellants would therefore prevent maritime liens arising out of contract from attaching to any vessel operated by a trustee, an assignee or an executor or administrator. If such a principle were adopted by this court, steps would soon be taken through the appointment of receivers and trustees to relieve the admiralty courts of their jurisdiction in all cases arising out of contract.

But, on the contrary, as was said by this court in Moran v. Sturgis, 154 U. S. 285, "maritime liens are incumbrances placed on vessels by operation of law, and neither the death or insolvency of the owner can divest or extinguish them or transfer jurisdiction over them to courts for the settlement of the estates of decedents or insolvents. * * * In the orderly administration of justice, the representatives of such estates should apply to the court which alone has cognizance to ascertain and enforce those exceptional interests in the thing itself, which accompanied wherever it goes and into whosesoever hands it comes."

On page 37 of the appellants' brief, inquiry is made, what commercial necessity exists for a lien in admiralty when the property is at all times retained within the jurisdiction of the equity court, and when the court is bound under its rules to sell the vessels, if necessity arises, to pay the employees? The answer to this is that a seaman performing services on board a vessel has, as a matter of law, a maritime lien of a superior character, and is not bound to go into a court of equity, where, as appellants state on page 27 of their brief, equity knows no favor, but would place such seaman on the same footing as every other creditor of the receiver, and where the argument of the seamen that in admiralty they would be entitled to a priority would be met, as stated on page 48 of the appellants' brief, as follows: "The court of equity could have but one answer. It was not administering admiralty rules. That the contracts in question were made with the court of equity, and no favoritism was permitted by its doctrines; that they were limited to the remedy given by equity."

Under the decision in Moran v. Sturgis, 154 U. S. 256, the respondents were clearly not required to submit themselves to the jurisdiction of a court where any such answer could be made to the claim that the respondents were entitled to a maritime lien of a superior character.

IV.

The liens of the respondents were not and could not be divested by any proceedings had in the state court.

Commencing on page 38, the appellants, conceding that the liens in favor of the libelants arose, argue at length that the sale of the railroad and vessels of the Oregon Pacific Railroad Company by the state court under the foreclosure decree was an adjudication of the rights of the respondents and divested the liens claimed by the respondents. No exception equivalent to a plea of prior adjudication was filed by the appellants to any of the amended libels; and it is conceded, on page 21 of the appellants' brief, that the question is not raised in any way whatsoever except by the second exception to each of the libels, namely, "that the libel shows that this court has no jurisdiction in the premises." Such exception could not possibly amount to a plea of estoppel as the result of any prior adjudication.

There never was any adjudication of the rights of the r spondents by the Circuit Court of Benton county, and the respondents have never received, as stated on pages 25 and 49 of the appellants' brief, any portion of the proceeds resulting from the sale of the railroads and boats of the Oregon Pacific Railroad Company. On the contrary, the libels allege, and the allegation is admitted, that the sums claimed by the respondents and each of them are due and owing, and that at the time of the sale the appellants were notified that the respondents claimed liens upon the vessels and bought with notice of such liens. No payment or part payment was made, and it is admitted, and such is the fact, that the sums now claimed by the respondents are due and owing.

On page 49 of appellants' brief it is stated that a suit to foreclose a mortgage is in its nature a proceeding ***in rem***. After citing authorities applicable to judgments ***in rem***, it is argued that as a result of the foreclosure sale of the railroad and vessels of the Oregon Pacific Railroad Company the liens of the respondents were divested. A suit to foreclose a mortgage is not an action ***in rem***, though sometimes loosely referred to as such, and a judgment entered therein is only conclusive between the parties. The distinction between a foreclosure suit and an action ***in rem*** is stated in Freeman v. Alderson, 119 U. S. 187, where, among other things, it is said:

"There is, however, a large class of cases which are not strictly actions *in rem*, but are frequently spoken of as actions *quasi in rem*, because, though brought against persons, they only seek to subject certain property of those persons to the discharge of the claims asserted. Such are actions in which property of non-residents is attached and held for the discharge of debts due by them to citizens of the state, and actions for the enforcement of mortgages, and other liens. Indeed, all proceedings having for their sole object the sale or other disposition of the property of the defendant to satisfy the demands of the plaintiff, are in a general way thus designated. But they differ, among other things, from actions which are strictly *in rem*, in that the interest of the defendant is alone sought to be affected, that citation to him is required, and that judgment therein is only conclusive between the parties."

The respondents were never parties to the foreclosure suit, were never called upon to appear therein on account of their interest, and, under the decision in Moran v. Sturgis, 154 U. S. 256, could not by any process of any kind whatsoever have been compelled to submit themselves to the jurisdiction of the equity court. That the respondents did not so submit themselves appears conclusively from the allegations of the amended libels, which are admitted by the exception.

If a lien arose in favor of the respondents as a result of their employment by the receiver, such lien was superior to the lien of the mortgage, and on familiar principles no sale under the mortgage could defeat the lien. The sale under the decree of foreclosure simply sold the interest of the Oregon Pacific Railroad Company in its railroad and property conveyed by it to the Farmers' Loan & Trust Company long prior to the creation of the liens; and was not a sale of any interest in the vessels acquired by the respondents as the result of their maritime lien.

V.

The lien of a seaman for wages may be assigned, and a *bona fide* assignment carries to the assignee all of the rights and securities of the original holder.

Libelant Dowsett sues on a claim due him personally, and on another claim transferred to him by assignment. The objection was made in the lower court that a lien in admiralty is a personal privilege, and one which cannot be assigned so as to give the assignee a right to maintain a proceeding ***in rem*** in admiralty.

The better considered doctrine of the present day is that the lien of a mariner for wages, as well as other maritime liens, is assignable when it has been perfected, and that an assignment in good faith carries with it to the assignee all the rights and securities of the assignor.

Some of the earlier decisions of the courts of the United States were adverse to this position, but we think the later cases will all be found in its favor. No good reason exists, either in law or in equity, why such liens should not be assignable. To deprive them of this character is to take from them a part of their value, to the manifest injury of the seamen, whom it is the policy of the law to foster and protect. Courts have extended the classes of choses in action which may be assigned until they include liens of every character, unless it be those of mariners, and an exception in their case would be productive of no possible good to them, but on the contrary, would be detrimental to their best interests.

We submit the following authorities:

The New Idea, 60 Fed. Rep. 294.
The American Eagle, 19 Fed. Rep. 879.
The M. Vandercook, 24 Fed. Rep. 472.
The Hull of a New Ship, 2 Ware. 203.
The Sarah J. Weed, 2 Low. 555.
Liberty No. 4, 7 Fed. Rep. 231.
The Victorian, 24 Oregon, 194.
Jones on Liens, Sec. 1798.

VI.

Raabe and Young, respondents in the case of The Three Sisters, are entitled to a lien.

It is contended on page 53 of appellants' brief that a court of admiralty has no jurisdiction to enforce the liens of R. J. Young and George Raabe in the case of The Three Sisters, because such respondents have no lien under the general maritime law, and that any lien claimed by them under the Oregon statutes, referred to on page 12 of appellants' brief, are barred by the limitation contained in section 3706 of said statute.

Two questions are therefore presented:

First. Did Young and Raabe have a maritime lien for the services performed by them?

Second. Is their lien under the boat lien law of Oregon barred by limitation?

It has been held that a "master" of a ship has no lien in admiralty upon the ship itself, but has a lien upon the freight

money coming into his hands. The reason for this rule is that the master of a ship receives all of the income, pays the crew, buys the supplies; and, as a result, there is necessarily an account existing between him and the ship. To allow a person occupying such a relation, and taking the ship to foreign ports, to have a lien upon the ship, would allow the master to cause the vessel to be seized in a foreign port where she might be without any representatives; and before knowledge of the seizure could come to the owner, the master could cause the ship to be sold, and thus unjust claims of the master be paid. A number of exceptions have been introduced to the rule; and, as we understand the rule, it only applies to masters in fact exercising the powers and duties of the master. As a result, a mate succeeding to the command of a ship upon the death of a master does not thereby lose his character as mate, but may sue in admiralty for his wages.

The Brig George, 1 Sumner, 151.

An engineer, the highest officer on board a dredge, and directing the foreman and other hands on board, but having no authority to engage or dismiss hands or purchase supplies, is entitled to a lien.

The Atlantic, 53 Fed. Rep. 607.

The sailing master of a yacht is not a master within the meaning of the rule, and has a lien for his wages.

The Carlotta, 30 Fed. Rep. 378.

In the present case, as alleged by the amended libels, the boats were operated upon a regular route between points and places at which there were regular agents. There was on board the steamer, an officer known as the purser, and the purser and the agents of the receiver collected all of the earnings of the boat, and none of them passed through the hands of Raabe or of Young. It is further alleged that the sole duties of Young and Raabe consisted in navigating the steamers upon routes selected by the receiver, and that during a portion of the time that the said Raabe was employed the steamer was tied up and all the crew with the exception of Raabe were discharged, but the said Raabe was retained to watch the said boat and care for the same, and the only duties performed by Raabe were those of watchman. (Transcript of record, Three Sisters, pp. 15 and 16).

The reason of the rule why a master is not entitled to a lien fails in the present case; and Young and Raabe should be entitled to a lien in admiralty for the same reason that a lien is allowed to the sailing master of a yacht. The captain of a river steamboat, under the circumstances stated in the

libel, is practically nothing but a pilot and navigating officer. The court will note that a part of Raabe's claim is for services rendered partly as watchman in charge of the boat, and that to this portion of his claim the exceptions filed by the appellants do not apply.

If Raabe and Young have no maritime lien for their services as captain, they certainly have a lien under section 3690 of Hill's Annotated Laws of Oregon, and this lien is one which can only be enforced by this court.

The Heine v. Trevor, 4 Wallace, 455.
The Moses Taylor, 4 Wallace, 411.
The Belfast, 7 Wallace, 624.
The J. E. Rumbell, 148 U. S. 1.

The claimants admit the existence of the lien under the Oregon laws, but claim that section 3706 of the Oregon statute bars the action in this court. The court will note that the boat lien law of Oregon consists of seventeen sections found in Hill's Annotated Laws of Oregon, and being sections 3690 to 3706, inclusive. The first section creates the liens. The second section provides for the priority. The third and fourth sections, being 3692 and 3693, read as follows:

"3692. Any person having a demand as aforesaid, instead of proceeding for the recovery thereof against the master, owner, agent or consignee of the boat or vessel, may, at its option, commence an action against such boat or vessel by name.

"3693. Any person wishing to commence an action against a boat or vessel shall file his complaint against such boat or vessel by name ***with the clerk of the Circuit Court of the county in which such boat or vessel may lie or be.*** The complaint shall set forth the plaintiff's demand in all its particulars, and on whose account the same accrued, and shall be verified by the plaintiff or some credible person for him."

All of the succeeding sections relate entirely to the remedy in the state court against the boat or vessel by name. The last section contains the limitation invoked by the appellants, and reads as follows:

"3706. All actions against a boat or vessel under the provisions of this title shall be commenced within one year after the cause of action shall have accrued."

There are several reasons why section 3706 does not apply to the present action:

First. The section by its terms is not a limitation upon the existence of the lien created by section 3690, but is sim-

ply a limitation upon the right of action in the state court created by section 3692.

Second. The section by its terms only requires the action to be commenced within one year after the cause of action accrued, and the cause of action does not accrue until suit could be commenced thereon.

Third. If in any way the cause of action could be said to have accrued prior to the time that suit might be commenced, then the action was stayed as a result of the pendency of the receivership, and the time of such suit is not a part of the time limited for the commencement of the action.

Certain maritime contracts give rise to actions *in personam* without giving rise to any maritime lien. This is illustrated by the two important classes of cases of supplies furnished in a home port and the employment of a master of a ship.

The Lottawana, 21 Wallace, 558.

Willard v. Dorr, 3 Sumner, 91.

The incident of a lien may be annexed to such maritime contract by a state statute, and such statute will be sustained by the admiralty courts of the United States; and the lien being in the nature of a maritime lien can only be enforced in the admiralty courts.

The Lottawana, 21 Wallace, 558.

The J. E. Rumbell, 145 U. S. 1.

Any attempt on the part of the state to confer jurisdiction upon its own courts to enforce such maritime contracts by proceeding *in rem* is void.

The Moses Taylor, 4 Wallace, 411.

The J. E. Rumbell, 148 U. S. 1.

The employment of a master is a maritime contract, and the only assistance which the court of admiralty needed to proceed *in rem* was state legislation creating a lien in favor of the master. If the limitation in the state statute affected the lien, then the admiralty court in enforcing the lien would be bound by the limitation, and would necessarily have to enforce the lien subject to all of the limitations which the state legislation had placed upon it.

Sections 3692 to 3706 are void in so far as they undertake to confer upon the state courts jurisdiction of proceedings *in rem* to enforce maritime contracts.

The Belfast, 7 Wallace, p. —.

Heine v. Trevor, 4 Wallace, 555.

The sections 3690 to 3706, therefore, have no application to liens created by section 3690 arising out of maritime contracts, and such is the construction placed upon the act by

the Supreme Court of the State of Oregon in The Victorian, 32 Pacific Reporter, 1040, 1042. This decision from the highest court of the state construing a state statute is necessarily binding upon this court.

In The Victorian the contention was made that all of the liens created by the original Oregon act of 1853 were maritime liens, and that as a result of the decision in The Heine v. Trevor, sections 3692 to 3706 were void, and that when the legislature amended the lien act in 1876, by giving a lien for the construction of a boat, it could not reasonably be said that the portion of the act giving the remedy had sufficient vitality to continue to live so as to be applicable to the lien created in 1876. The court disposed of this contention in The Victorian on the first half of page 1042, by holding that sections 3692 to 3706 only relate, and can only relate, to the construction liens created by section 3690, and have no application to any of the other liens.

It will further be noted that section 3706 does not by its terms limit the right of lien, but only undertakes to limit the right of action in the state court given by the statute. If the section has provided that the liens created by this act shall only be enforced by actions commenced within one year, then the admiralty court in adopting the lien would necessarily have to adopt the limitation upon it; but the limitation in the present case does not apply to the lien, but only to a right of action, which the admiralty court does not recognize in any way whatsoever. The limitation upon a right of action in the state court is merely a matter of procedure, and when the admiralty court does not adopt the procedure it does not adopt the limitation.

Further, when does the action accrue under section 3706? The cause of action accrues only when a suit may be commenced upon it, and not simply when the debt may be due or an injury may have been suffered. The only cause of action on which the libelants could commence to enforce their lien was one in the District Court.

The Heine v. Trevor, 4 Wall. 555.

The J. E. Rumbell, 148 U. S. 1.

No action could be commenced in the United States District Court during the pendency of the receivership. The mere filing of a libel is not the commencement of an action in admiralty, for an admiralty court has no jurisdiction of any kind whatsoever until it obtains the custody of the res.

Further, section 20 of Hill's Code of Oregon provides expressly that the time of the stay in any action by injunction or statutory prohibition shall not be part of the time

limited for the commencement of the action. By the injunction referred to in this action is not meant an injunction obtained in a suit commenced against the litigant, but is an injunction or suit as the result of any legal proceeding.

Hoff v. Funckenstein, 54 Cal. 233.

Von Saxe v. Tretz, 72 N. Y. 548.

In the California case it is said, page 235, that the theory of the California Statute of Limitations, containing a provision similar to that of the Oregon act, is that the creditor has a given time, on any day of which he may of his own volition commence an action. Note particularly the remarks in the California case about the right of the litigant in that case to apply to the United States District Court for leave to sue, and the answer which the California court made to the contention found in the discussion on page 235, namely, that while the litigant might so have applied and might have been allowed to sue, yet, nevertheless, his application might have been refused, and so long as the litigant could not of his own volition have commenced the suit the statute of limitations would not and could not run against him.

In the present case, the only court in which the libelants could have commenced their action to enforce their lien was the District Court of the United States, and that court on the application of persons similarly situated refused to allow the action to be commenced during the pendency of the receivership. The United States District Court could not, without a violation of the principles of comity governing that court, have seized the vessel, and the only way in which the libelants could have commenced their suit would have been to obtain leave from the Circuit Court of Benton County.

The claimants would seem to insist that a proceeding ***in rem*** is commenced when the libel is filed, and that had the libelants Young and Raabe filed their libels within a year the Statute of Limitations would not have run. It is undoubtedly true that the first step in commencing a suit in admiralty is to file a libel, but this is not the commencement of a suit within the meaning of the Statutes of Limitations. It is a familiar principle of the law of limitations that a suit is only commenced when the writ is issued out and delivered to the officer with a ***bona fide*** intention to have it served. ***Angel on Limitations***, 312. Without the custody of the ***res*** an admiralty court has no jurisdiction for any purpose whatsoever. ***The Hungary***, 41 Fed. Rep. 109. Where for any reason the res cannot be seized or is not properly seized, the

invariable decree in a court of admiralty is to dismiss the libel.

Examine further the argument of the claimants. A vessel can be seized in any court of admiralty within whose jurisdiction it may be found. What right has the intending libelant to deposit his libel more or less secretly in any admiralty court, and then wait patiently year after year until the vessel by some strange chance comes into the jurisdiction selected by the libelant? Would such action give any notice to any one? And within what jurisdictions must a man search the titles of a ship to see whether there are outstanding liens or claims against her? Owing to the peculiarity of the jurisdiction, admiralty applies the doctrine of laches rather than the strict letter of any statute of limitations. Suppose the home port of a vessel was Portland, and she should have been taken over to Puget Sound and there operated for a number of years, passing through various hands, could a libelant defend against the application of the doctrine of laches by stating that soon after his claim had accrued he had filed a libel in this court? The plain answer to such a proposition is that the vessel has always been within easy reach of the process of a neighboring court. Suppose the vessel had constantly remained on Puget Sound, and that then the libelant should go over and undertake to seize the vessel in the District of Washington, would the fact that the libelant had filed his libel here prevent the Statute of Limitations from running against him, and would the filing of the libel here enable the claimant in the District of Washington to plead the pendency of a suit in any other jurisdiction? Even if the filing of the complaint at common law constituted the commencement of a suit, the nature of admiralty jurisdiction would prevent any such rule from being applied by an admiralty court. On the contrary, at common law a suit is only commenced when the writ is issued, and there is an actual ***bona fide*** attempt to have it served.

For the reasons already stated, the decrees of the court below should be affirmed.

L. B. COX,
W. W. COTTON,
THOS. O'DAY,
and C. F. LORD,
Proctors for Respondents.

W. W. COTTON, Advocate.

NOV 1 1897
JAMES H. McKENNEY

f°. 135.

Motion by D. C. to dismiss.

IN THE

Filed Nov. 1, 1897.

SUPREME COURT

OF THE

UNITED STATES.

OCTOBER TERM, 1897.

No. 135.

The Steamtug "Resolute," A. B. Hammond and E. L. Bonner, Claimants.	*Appellants.*	Motion to Dismiss Appeal.
v.		
George Dowsett.	*Respondent.*	

Now comes the respondent, by his counsel appearing in his behalf, and moves the court to dismiss the appeal in the above-entitled cause upon the following grounds:

First. That this court has no jurisdiction of the said appeal for the reason that as appears from the record

of the District Court of the United States, for the District of Oregon, had jurisdiction of the said cause, and the jurisdiction of the said court was not in issue in the said cause and no question concerning the jurisdiction of the said District Court is presented by this appeal.

SECOND. For the reason that no question concerning the jurisdiction of the District Court of the United States, for the District of Oregon, over said cause, has been certified to this court from the said District Court for decision.

THIRD. For the reason that no question concerning the jurisdiction of the District Court of the United States, for the District of Oregon, over said cause, has alone been certified to this court from the said court for decision, but, on the contrary, the matter undertaken to be certified to this court by the said District Court involves questions not relating to the jurisdiction of said District Court over this cause.

The facts upon which this motion is based appear in the allowance of the appeal and certificate of the District Judge found in the printed transcript of record in this cause, commencing on page 30 thereof.

L. B. Cox

Proctor for the Respondent.

Due service of the foregoing motion is hereby admitted at Portland, Oregon, this 23d day of October 1897, any objection to the time of service of such motion being hereby waived. It is hereby stipulated, by and between the parties hereto, that separate briefs upon said motion need not be served or filed, but that the said briefs upon the motion to dismiss may be made a part of the Respondents briefs upon the merits and be served at the time required for the service of said briefs upon the merits.

W. McF. Muir

Proctors for Appellants.

L. B. Cox

Proctors for Respondent.

No. 136.
Motion by D. E. to dismiss.
Copy.
Filed Nov. 1, 1897.

IN THE

SUPREME COURT

OF THE

UNITED STATES.

OCTOBER TERM, 1897.

No. 136.

THE STEAMTUG "RESOLUTE," A. B. HAMMOND and E. L. BONNER, Claimants, *Appellants*,		Motion to Dismiss Appeal.
v.		
HENRY E. WILSON, SYDNEY G. WOLFKILL, THOMAS NELSON and CHARLES JAHN, *Respondents*.		

Now come the respondents, by their counsel appearing in their behalf, and move the court to dismiss the appeal in the above-entitled cause upon the following grounds:

FIRST. That this court has no jurisdiction of the said appeal for the reason that as appears from the record

of the District Court of the United States, for the District of Oregon, had jurisdiction of the said cause, and the jurisdiction of the said court was not in issue in the said cause and no question concerning the jurisdiction of the said District Court is presented by this appeal.

SECOND. For the reason that no question concerning the jurisdiction of the District Court of the United States, for the District of Oregon, over said cause, has been certified to this court from the said District Court for decision.

THIRD. For the reason that no question concerning the jurisdiction of the District Court of the United States, for the District of Oregon, over said cause, has alone been certified to this court from the said court for decision, but, on the contrary, the matter undertaken to be certified to this court by the said District Court involves questions not relating to the jurisdiction of said District Court over this cause.

The facts upon which this motion is based appear in the allowance of the appeal and certificate of the District Judge found in the printed transcript of record in this cause, commencing on page 25 thereof.

L. B. Cox,

Proctor for the Respondents.

Due service of the foregoing motion is hereby admitted at Portland, Oregon, this 23rd day of October, 1897, any objection to the time of service of such motion being hereby waived. It is hereby stipulated, by and between the parties hereto, that ~~separate~~ briefs upon ~~said motion~~ need not be served or filed, but that the said briefs upon the motion to dismiss may be made a part of the briefs upon the merits and be served at the time required for the service of said briefs upon the merits.

W. H. Mills

Proctors for Appellants.

L. B. Cox

Proctors for Respondents.

NOV 1 - 1897
JAMES H. McKENNEY
CLERK

No. 137. Copy.
Motion by O. & E. to dismiss.

IN THE

SUPREME COURT

Filed Nov. 1, 1897.
OF THE

UNITED STATES.

OCTOBER TERM, 1897.

No. 137.

THE STEAMER "WILLIAM M. HOAG," OREGON CENTRAL & EASTERN RAILROAD COMPANY,
Claimant and Appellants,
v.
R. J. YOUNG, M. BELL, C. A. BELL, H. ROBERTSON, W. HOWELL, H. W. SUTTON, D. LATEREAUX, A. SENN, W. YOUNG, JACOB MULTHAUF, WALTER KAISER, JAMES CLUNE, OTIS COLE, A. EPPERLY and GEORGE RAABE,
Libellants and Respondents.

Motion to Dismiss Appeal.

Now come the respondents, by their counsel appearing in their behalf, and move the court to dismiss the appeal in the above-entitled cause upon the following grounds:

FIRST. That this court has no jurisdiction of the said appeal for the reason that as appears from the record

the District Court of the United States, for the District of Oregon, had jurisdiction of the said cause, and the jurisdiction of the said court was not in issue in the said cause and no question concerning the jurisdiction of the said District Court is presented by this appeal.

SECOND. For the reason that no question concerning the jurisdiction of the District Court of the United States, for the District of Oregon, over said cause, has been certified to this court from the said District Court for decision.

THIRD. For the reason that no question concerning the jurisdiction of the District Court of the United States, for the District of Oregon, over said cause, has alone been certified to this court from the said court for decision, but, on the contrary, the matter undertaken to be certified to this court by the said District Court involves questions not relating to the jurisdiction of said District Court over this cause.

This motion is made upon the facts appearing in the allowance of appeal and certificate of the District Judge found on page 27 of the printed transcript of record in the case of the Oregon Central & Eastern Railroad Company v. R. J. Young et al., being case No. 138 in the docket of the present term of this Court, it being stipulated, as appears by reference to page 36 of the said printed transcript in said cause 138, that the decision in said case 138 shall determine the issues and points involved in the cause in which this motion is made.

L. B. Cox,

Proctor for Respondents.

Due service of the foregoing motion is hereby admitted at Portland, Oregon, this 13th day of October, 1897, any objection to the time of service of such motion being hereby waived. It is hereby stipulated, by and between the parties hereto, that separate briefs upon said motion need not be served or filed, but that the said briefs upon the motion to dismiss may be made a part of the briefs upon the merits and be served at the time required for the service of said brief upon the merits.

W. W. Thomas

Proctors for Appellants.

L. B. Cox,

Proctors for Respondents.

copy

No. 138.

Motion by O. C. to dismiss.

IN THE

SUPREME COURT

Filed Nov. OF THE 1897.

UNITED STATES.

OCTOBER TERM, 1897.

No. 138.

THE OREGON CENTRAL AND EASTERN RAILROAD COMPANY, Claimant of the Steamer "THREE SISTERS," *Appellant*,

v.

R. J. YOUNG, M. BELL, C. A. BELL, H. ROBERTSON, W. HOWELL, H. W. SUTTON, D. LATEREAUX, A. SENN, W. YOUNG, JACOB MULTHAUF, WALTER KAISER, JAMES CLUNE, OTIS COLE and GEORGE RAABE, *Respondents*.

Motion to Dismiss Appeal.

Now come the respondents, by their counsel appearing in their behalf, and move the court to dismiss the appeal in the above-entitled cause upon the following grounds:

FIRST. That this court has no jurisdiction of the said appeal for the reason that as appears from the record

the District Court of the United States, for the District of Oregon, had jurisdiction of the said cause, and the jurisdiction of the said court was not in issue in the said cause and no question concerning the jurisdiction of the said District Court is presented by this appeal.

SECOND. For the reason that no question concerning the jurisdiction of the District Court of the United States, for the District of Oregon, over said cause, has been certified to this court from the said District Court for decision.

THIRD. For the reason that no question concerning the jurisdiction of the District Court of the United States, for the District of Oregon, over said cause, has alone been certified to this court from the said court for decision, but, on the contrary, the matter undertaken to be certified to this court by the said District Court involves questions not relating to the jurisdiction of said District Court over this cause.

The facts upon which this motion is based appear in the allowance of the appeal and certificate of the District Judge found in the printed transcript of record in this cause, commencing on page 27 thereof.

L. B. Cox,

Proctor for the Respondents.

Due service of the foregoing motion is hereby admitted at Portland, Oregon, this 23rd day of October, 1897, any objection to the time of service of such motion being hereby waived. It is hereby stipulated, by and between the parties hereto, that separate briefs upon said motion need not be served or filed, but that the said briefs upon the motion to dismiss may be made a part of the respondents' briefs upon the merits and be served at the time required for the service of said brief upon the merits.

Wm. D. Muir

Proctors for Appellants.

L. B. Cox.

Proctors for Respondents.

THE RESOLUTE, DOWSETT, Libellant.

THE RESOLUTE, WILSON, Libellant.

APPEALS FROM THE DISTRICT COURT OF THE DISTRICT OF OREGON.

Nos. 135, 136. Submitted November 12, 1897. — Decided December 6, 1897.

A District Court of the United States has jurisdiction of a libel of a vessel for seamen's wages, which accrued while the vessel was in the custody of a receiver appointed by a state court upon the foreclosure of a mort-

Statement of the Case.

gage upon the property of a railroad company, owner of the vessel, the vessel having been sold and passed into the purchaser's hands, and the receiver discharged when the warrant of arrest was served.

The remedy against the decree of the District Court was an appeal to the Circuit Court of Appeals.

No. 135 was an appeal from the District Court for the District of Oregon, awarding to the libellant, George Dowsett, the sum of $825.50 due to him individually, and the further sum of $358.02 due to him as the assignee of one Tellefson, for wages as seamen upon the tug Resolute. The tug was engaged in the business of towing vessels and barges on and over the bar between Yaquina Bay and the Pacific Ocean, and the waters tributary thereto, within the District of Oregon.

The libel, which was filed on April 26, 1894, was in the ordinary form of a libel for seamen's wages, except that it alleged that the vessel was at that time in the hands of a receiver of a Circuit Court for the State of Oregon. Upon application being made for a warrant for arrest, it was refused upon the ground that the tug was within the custody of a receiver of a state court. Subsequently, and on February 25, 1895, upon affidavit that the receiver had been discharged and the property sold, the order denying the warrant of arrest and directing that the libel remain in abeyance until the tug should be discharged from the custody of the state court, was vacated, and a warrant of arrest ordered to issue. The tug having been released upon bond given, the libel was thereupon amended by alleging that while the said services were being rendered the steam tug was in charge of a receiver appointed by the Circuit Court of the State of Oregon, and that she had since been sold to parties having notice of libellant's claim and had been discharged from such receivership. Exceptions were thereupon filed to the libel upon the ground that it showed that when the services were rendered, the steam tug was in charge of, and operated by, a receiver of the Oregon and Pacific Railroad Company, a corporation, the owner of said steam tug; and that no maritime or other lien had arisen by reason of such employment, or by the rendition of such services; and also that the court had no juris-

diction in the premises. Upon a hearing before the court, these exceptions were overruled and leave given to answer the amended libel.

Claimants having elected not to answer the libel, their default was entered, and a final decree awarded in favor of the libellant in the amount claimed by him; whereupon the claimants prayed an appeal to this court; and the District Court certified that "the only question arising upon said appeal is the question as to whether or not, under the facts stated in the amended libel and the exceptions thereto, this court acquired or had jurisdiction to pronounce the said decree." A motion was made to dismiss the appeal for want of jurisdiction.

Mr. L. B. Cox, *Mr. W. W. Cotton*, *Mr. Thomas O'Day* and *Mr. C. F. Lord* for the motion to dismiss; and for the respondents.

Mr. William T. Muir and *Mr. John W. Whalley* opposing, and for the claimants.

Mr. Justice Brown, after stating the case, delivered the opinion of the court.

The sole question presented by the record in this case is whether the court was correct in assuming jurisdiction of a libel for seamen's wages, which accrued while the vessel was in the custody of a receiver, appointed by a state court, upon the foreclosure of a mortgage upon the property of the Oregon and Pacific Railroad Company, owner of the tug.

Jurisdiction is the power to adjudicate a case upon the merits, and dispose of it as justice may require. As applied to a suit *in rem* for the breach of a maritime contract, it presupposes, first, that the contract sued upon is a maritime contract; and, second, that the property proceeded against is within the lawful custody of the court. These are the only requirements necessary to give jurisdiction. Proper cognizance of the parties and subject-matter being conceded, all other matters belong to the merits.

The contention of libellant is that, as a maritime lien is the sole foundation of a proceeding *in rem*, such facts must be averred as to show that a lien arose in the particular case; or, at least, that if the libel shows that a lien could not have existed, it should be dismissed for want of jurisdiction. The averment relied upon in this libel is that the vessel was at the time the services were rendered in the hands of a receiver appointed by a state court. This fact, however, is not absolutely inconsistent with a lien *in rem* for seamen's wages. *Paxson* v. *Cunningham*, 63 Fed. Rep. 132. It may have been expressly bargained for by the receiver, it may be implied from the peculiar circumstances under which the services were rendered, or it might be held to have arisen from the peremptory language of the statute, Rev. Stat. § 4535, that "no seaman shall, by any agreement other than is provided by this title, forfeit his lien upon the ship, or be deprived of any remedy for the recovery of his wages to which he would otherwise have been entitled, and every stipulation in any agreement inconsistent with any provison of this title . . . shall be wholly inoperative." *Prima facie*, the rendition of mariner's services imports a lien, and the mere fact that the vessel is navigated by a receiver does not necessarily negative such lien, although there may be facts in the particular case to show that the above statute does not apply, or that credit was expressly given to the owner, to the charterer or to some third person. In fact, the question of lien or no lien is not one of jurisdiction, but of merits.

It is true that there can be no decree *in rem* against the vessel except for the enforcement of a lien given by the maritime law, or by a state law; but if the existence of such a lien were a question of jurisdiction, then nearly every question arising upon the merits could be made one of jurisdiction. Thus, supplies furnished to a vessel import a lien only when they are sold upon her credit; and the defence ordinarily made to such claims is that they were sold upon the personal credit of the owner or charterer; but certainly it could not be claimed that this was a question of jurisdiction. The existence of a lien for collision depends upon the question of fault or no

fault, but it never was heard of that it thereby became a question of jurisdiction. Salvage services, too, ordinarily import a lien of the very highest rank; but it has sometimes been held that, if such services are rendered by seamen in the employ of a wrecking tug, or by a municipal fire department, no lien arises, for the reason that the men are originally employed for the very purpose of rescuing property from perils of the sea, or loss by fire. In the case under consideration a portion of the libellant's claim arises by assignment from Tellefson, and the authorities are almost equally divided upon the question whether such assignment carries the lien of the assignor to his assignee. Obviously these are not jurisdictional questions.

In determining the question of a lien in the case under consideration much may depend upon the manner in which the vessels were sold by the receiver. Were they sold in bulk, and merely as a part of the entire property of the insolvent corporation, upon the foreclosure of the mortgage, or was each vessel sold separately, and subject to the liens for mariner's wages which accrued before and while they were in the possession of the receiver? Did the order direct these vessels to be sold free of maritime liens, or subject to them, or was it silent in this particular? Were the lienholders upon these vessels paid from the purchase money, according to their relative rank, as they would have been had the sale been conducted by a court of admiralty? If they were, that would amount to very strong, if not conclusive, evidence against the subsequent endeavor to enforce the liens in a court of admiralty. We cannot assume that the court would authorize its receiver to run these vessels without making some provision for a preferential payment of their current expenses. *Meyer* v. *Western Car Co.*, 102 U. S. 1; *Kneeland* v. *American Loan Co.*, 136 U. S. 89. None of these were questions which went to the jurisdiction of the court to entertain the libels, but were such as would properly arise, either upon the exception to the libels, or upon an answer putting the facts in issue.

Had the vessel, at the time the warrant of arrest was served, been in the actual custody of the receiver, a different question

would have been presented; but the facts of this case show that she had been sold, and had passed into the hands of her purchaser, and that the receiver had been discharged.

The case of *Ex parte Gordon*, 104 U. S. 515, goes even farther than is necessary to support the action of the District Court in assuming jurisdiction of this case. In that case a writ of prohibition was sought to restrain the District Court for the District of Maryland from proceeding against a vessel to recover damages for loss of life in a collision. It was held that, as the case was one of a maritime tort, of which the District Court unquestionably had jurisdiction, it was for that court to decide whether the vessel was liable for pecuniary damages resulting from the loss of life. "Having jurisdiction," said the Chief Justice, "in respect to the collision, it would seem necessarily to follow that the court had jurisdiction to hear and decide what liability the vessel had incurred thereby." The question was held not to be jurisdictional, but one properly arising upon the merits. See also *The Charkieh*, 8 Q. B. 197; *Schunk* v. *Moline &c. Co.*, 147 U. S. 500; *Smith* v. *McKay*, 161 U. S. 355.

So, too, in *In re Fassett*, 142 U. S. 479, the owner of the yacht Conqueror filed a libel for possession, against her and the collector for the port of New York, claiming delivery of the vessel to him and damages against the collector, who had seized her as a dutiable import. The collector applied to this court for a writ of prohibition, alleging that the District Court had no jurisdiction of the suit. We held that the subject-matter of the libel was a marine tort; that the question whether the vessel was liable to duty was properly justiciable in the District Court, and that that court had jurisdiction. Said Mr. Justice Blatchford, in delivering the opinion of the court, p. 484: "The District Court has jurisdiction to determine the question, because it has jurisdiction of the vessel by attachment, and of Fassett by monition; and for this court to decide in the first instance, and in this proceeding, the question whether the yacht is an article imported from a foreign country, and subject to duty under the customs-revenue laws, would be to decide that question as a matter of original jurisdiction,

and not of appellate jurisdiction, while as a question of original jurisdiction, it is duly pending before the District Court of the United States on pleadings which put that very question in issue." See also *In re Cooper*, 143 U. S. 472.

No. 136 is also a libel for wages, and involves precisely the same questions as are involved in the case of Dowsett, and will be disposed of in the same way. Claimants have mistaken their remedy in these cases, and should have appealed to the Circuit Court of Appeals.

The decrees of the District Court, in so far as they assume jurisdiction of these cases, are therefore

Affirmed.